LECTURES ON CONTRACTS-I
(General Principles)

Detailed Contents

Lectures — Page No.

Lecture-I

Introduction

- Introduction 1

Lecture-II

Elements of Contract

- Introduction 10

1. Contract : Meaning and Definition 11
2. Essentials of Contract 13
   - i) Two parties (Offeror Sec. 2(a) & Acceptor Sec.2(b)) 14
   - ii) Consensus-ad-idem (Identity of Minds) 14
   - iii) Capacity to Contract (Sec.11) 14
   - iv) Free Consent (Sec.14) 15
   - v) Lawful Consideration (Sec.2(d)) 15
   - vi) Legal Relationship 16
   - vii Lawful object (Sec.23) 18
   - viii) Terms must be certain 18
   - ix) Possibility of Performance 19
3. Kinds of Contracts. 20
   - i) Valid Contract 20
   - ii) Void Contract 21
   - iii) Voidable Contract 22
   - iv) Unenforceable Contract 23
   - v) Illegal Contract 23

Lecture-III

Offer and Acceptance

Introduction 26

Lectures Page No.

1. Offer (Sec.2(a) **27**
- i) Meaning and Definition 27
- ii) Essential Elements of a valid offer 27
  - 1. Offer may be express or implied 28
  - 2. It must create legal relations 28
  - 3. Terms must be clear and certain 29
  - 4. It must be specific or public 30
  - 5. Offer and Invitation to offer 31
  - 6. It must be communicated to the offence 33
- iii) Revocation of Offer/proposal 37
- iv) Cross Offers 38
- v) Standing or Open or Continuing Offer 39

2. Acceptance **40**
- i) Meaning and Definition **41**
- ii) Essential Elements 41
  - 1. An acceptance must be absolute and unqualified 42
  - 2. Acceptance should be expressed in usual manner or as per mode prescribed 43
  - 3. Reasonable time 44
  - 4. Before Revocation of offer 45
  - 5. Must be communicated 45

Communication and Revocation of Acceptance 46
Mode of communication 47
Revocation of Acceptance 48
Case comment 50

Lecture-IV

Consideration 51

1. Consideration : Meaning and Definition 55
2. Essential Elements 56
3. Past Consideration 61
4. A contract without consideration is valid (Sec.25) 63

Lectures

Page No.

1. Love and Affection 64
2. Compensation for voluntary services 65
3. Promise to pay time barred debt 66
5. Stranger to Contract or Privity of Contract 67
Exceptions 70

Lecture-V

Capacity to Contract

1. Capacity or Competence : Meaning 75
2. Competence to Contract or Capacity to Contract (Sec. 11) 75
3. Incapacity or Disqualification to Contract 76
A. Minor 76
B. Persons of unsound mind 84
C. Persons disqualified by law 87
Case Comment 87
1. *Mohiri Bibi vs. Dharmadas Ghose* 87
Problem 88

Lecture-VI

Free Consent

1. Free Consent : Meaning & Definition 91
2. Flaws in Consent 93
(A) Coercion (Sec.15) 93
(B) Undue Influence (Sec.16) 96
(C) Fraud & Misrepresentation (Sec.17&18) 100
(D) Mistake (Ss.20, 21 and 22) 104

Lecture-VII

Lawful object or Legality of object

1. Agreement in restraint of Trade (Sec.27) 109
2. Agreement in restraint of Marriage (Sec.26) 114
3. Agreements in restraint of Legal Proceedings (Sec.28) 116
4. Agreements void for uncertainty 118

Lectures Page No.
5. Agreement to commit a Crime 119
6. Agreement with Alien 122
7. Wagering Agreement (Sec.30) 123

Lecture-VIII

Wagering Agreements (Sec. 30) and Contingent Contracts

1. Wagering Agreement or Contract of Wager (S.30) 124
i) Wager : Meaning and Definition 124
ii) Effect of Wagering Contracts 125
iii) Wagering Agreement and Insurance Contract 127
2. Contingent Contract (Ss.31-36) 127
i) Contingency : Meaning and Definition 128
ii) Enforcement of Contingent Contract 129
iii) Distinction between Contingent Contract Wagering Contract 132

Lecture-IX

Discharge of Contract

Modes of Discharge 133
1. Discharge by performance of contractual obligation 134
(A) Tender or Offer of Performance 134
(B) Performance by Joint Promisors 135
(Devolution of Joint Liabilities (Ss.42-44)
(C) Appropriation of Payments (Ss.59-61) 139
(The Rule in Clayton's Case)
2. Discharge by Impossibility of Performance 141
(The Doctrine of Frustration (Sec.56)
3. Discharge by Subsequent Agreement 147
(A) Novation 147
(The Doctrine of Novation - Sec. 62)
(B) Discharge by Remission 150
(C) Accord and Satisfaction 150

Lectures

Page No.

4. Discharge by Breach of Contract 150
Kinds of Breach of Contract 151
1. Anticipatory Breach 151
2. Present Breach or During Performance 152
5. Discharge by Lapse of Time 152
6. Discharge by Operation of Law 152

Lecture-X

Quasi-Contracts

1. Quasi Contract : Meaning and Definition 155
2. Kinds of Quasi Contracts (Ss.68-72) 157
i) Supply of Necessaries to a person not competent to contract(minor) (Sec.68); 157
ii) Payment by an Interested Person (Sec.69) 160
iii) Non-Gratuitous Acts (Sec.70) 161
iv) Responsibility of Finder of Lost Goods (Sec.71) 163
v) Payment by Mistake or Coercion (Sec.72). 165
Caselaws 167
Problems 168

Lecture-XI

Remedies

(Remedies for Breach of Contract)

1. Rescission of the Contract 170
2. Suit for Damages 178
3. Suit for quantum meruit 182
4. Suit for specific performance or injunction 184

SUBJECT INDEX 185
UNIVERSITY QUESTION PAPERS 191

Lecture-I

INTRODUCTION

From the early morning to late night, i.e. from the time we get up from bed, till we go to the bed in the night, we enter into a number of transactions during the regular course of our life., and these transactions/activities directly or indirectly., expressly or impliedly result in contracts. For instance, for food, we enter into a contract with seller/supplier of the food/provisions of food viz. rice, wheat, oil, dals etc. Similarly, for shelter, we enter into a contract with seller/builder to purchase an independent house or a flat or a landlord/Lessor to get the residential accommodation on rent/lease. Similarly for all our needs like medical, education, entertainment etc. To satisfy our needs/requirements, we contact with other person/persons/parties. Such contact forms basis to enter into an agreement (oral or written, express or implied) which ultimately results into a contract.

The law, which deals with contracts is called 'Law of Contracts' and is governed by the "Indian Contract Act, 1872". The Indian Contract Act was passed in 1872 and came into force from 1st September, 1872 (P.S. The law relating to transfer of movable property (goods) is governed by the Sale of Goods Act, 1930. Similarly, the law relating to transfer of immovable property (and also movable property) by Sale, Lease, Mortgage, Gift etc. between two living persons is governed by the Transfer of Property Act, 1882). It extends to the whole of India. At the time of passing, it contained 266 sections as detailed below –

1. Sections 1 to 75 deal with "General Principles".
2. Sections 76 to 123, which dealt with Sale of Goods, is repealed and replaced by the Sale of Goods Act, 1930.
3. Sections 124 to 147 deal with the two kinds of special contracts namely, the Contract of Indemnity and the Contract of Guarantee.

4. Sections 148 to 181 lay down the provisions relating to special contracts namely, the Contract of Bailment and the Contract of Pledge or Pawn.
5. Sections 182 to 238 deal with the Contract of Agency and
6. Finally, sections 239 to 266, which dealt with the law relating to partnership are repealed and replaced by section 73 and Schedule II of the Indian Partnership Act, 1932.

The present subject, Contracts-I deals with the general principles of the Contract Act under sections 1 to 75 as stated below –

1. Lecture-I contains the contents of the subject, Contracts-I deals with the "General Principles".
2. Lecture–II deals with meaning, definition and elements or ingredients or requisites of contract viz. i) Offer and Acceptance., ii) Consideration., iii) Capacity to contract., iv) Free Consent., v) Lawful object or Legality of object etc. These ingredients are studied in detail in the following subsequent lectures III, IV, V, VI,VII and VIII respectively. Lecture II also deals with the kinds of contracts viz. Valid Contract, Void Contract, Voidable Contract, Unenforceable Contract and Illegal Contracts. Valid contract means, a contract, which fulfils all conditions/ingredients of a contract and is enforceable (Sec. 2(h) & Sec. 10). Void contract means 'invalid contract and is not enforceable'. Eg. Contract with minor or unsound person or legally disqualified person viz. insolvent, alien enemy etc. Voidable contract is one, which is created/entered into by a flaw in consent viz. coercion, undue influence, misrepresentation, fraud, mistake etc. If the aggrieved party questions/challenges in court, it becomes void (invalid). If not questioned, it may be allowed to be valid. Eg. Marriage contract by fraud. If questioned, it will be void/cancelled. If the aggrieved party/spouse keeps quiet/does not question/challenge, the marriage may be allowed to be a valid marriage. Unenforceable contract is one in

which technical formalities are not fulfilled. Eg. Sale of house or land requires registration. Without registration, the contract or sale is not valid and enforceable. Finally, illegal contract is one which is strictly prohibited by law. It is a contract to do an illegal act or legal act by illegal means. E.g. Contract to commit a crime.

3. Lecture III deals with the first ingredient of contract namely, Offer and Acceptance. To constitute/create/form contract, there must be atleast two parties namely the offeror and acceptor. The person who offers (proposes) is called offeror and who accepts is called acceptor. For instance, A offers to sell his house for Rs. 5 lacs and B accepts to purchase it for the said amount. In this example, A's proposal to sell his house is called offer and B's willingness to purchase the house for the said amount is called acceptance. Sections 2 (a) and 2 (b) of the Contract Act deal with offer and acceptance respectively. This lecture deals with meaning, definition and elements of offer and acceptance., and communication and revocation of offer and acceptance. Communication of offer means the offeror by orally or by writing communicates/informs his offer/proposal to offeree, it is called communication of offer. In simple words, offeror's offer reaches to offeree/acceptor. Similarly, Offeree/ Acceptor's acceptance/willingness is reached to the offeror, it is called communication of acceptance. Revocation of offer or acceptance means withdrawing from the offer or acceptance (as the case may be) before it (offer or acceptance) is reached to the other party.

4. Lecture IV deals with another element of contract, consideration. Consideration means something in return. It may be in cash or kind or in service. In a contract of sale of a house for Rs. 5 lacs., Rs. 5 lacs (money) is consideration to the seller., while the house is consideration to the purchaser/ buyer. In simple words, consideration is the price of a contract. Without consideration, any contract is void/invalid.

However, there are certain exceptions to this rule under sec. 25 i.e. contract is valid even without the consideration.

5. Lecture V deals with the capacity of parties to enter into a contract. Suppose, a girl of 8 years old goes to a jewellery shop to purchase a gold worth Rs.10,000/-, no seller would normally sell. Therefore, Sec. 11 prescribes certain conditions to enter into a contract viz. he/she must not be a minor (i.e. must be a major)., he/she should not be of unsound mind (i.e. must be of sound mind) and he/she should not be an insolvent, alien enemy etc.). If a contract is entered into with such person, not competent to contract, the contract is void/invalid.

6. Lecture VI deals with another ingredient of contract namely, free consent. We should not insist any person to enter into a contract with us against his will. He/she should enter into an agreement/contract with us with free consent without any pressure or fear. If he/she enters into contract without any pressure or fear, he/she is said to have entered into the contract with free consent. When two persons/parties agree to a same thing in the same sense at the same time, the parties are said to be consented. The consent is said to be free in the sense, it is free from/not influenced by the flaws in consent viz. coercion, undue influence, fraud, misrepresentation, mistake etc. If the consent is given by either of the parties to the contract out of any flaw (coercion, or undue influence etc.) in consent, the contract is voidable and the party, who is forced/subjected to the flaw in consent, can avoid/repudiate/cancel the contract. Sections 15 to 22 deal with flaws in consent.

   Section 15 deals with coercion. It is a process or force by which consent is obtained by threat to commit crime. Eg. A threatens B to transfer B's property in favour of A failing which B's child C will be killed. Similarly, X threatens Y to commit suicide if Y does not marry X. Sec.

16 deals with undue influence. If a superior induces his subordinate to give consent to enter into an agreement. If an officer induces his subordinate to sell his property at a lower price or the former induces the latter to let out his flat for a meagre rent. Sections 17 and 18 refer to misrepresentation. It means misstatement or untrue statement. If the untrue statement/misstatement is made willfully/ knowingly/intentionally, it is called Fraud (Sec. 17). If the misstatement is not willful and it is made innocently/ unknowingly, it is called innocent misrepresentation (Sec. 18). Whether the misrepresentation is willful (fraud) or innocent (misrepresentation) the contract is voidable (as in the case of coercion or undue influence). Sections 20, 21 and 22 deal with mistake. It means erroneous belief/opinion about something. Mistake is of two kinds namely, i) mistake of fact (Sec. 20) and ii) mistake of law (Sec. 21). The former is excusable, while the latter is not. Mistake of fact is sub divided into two kinds viz. a) unilateral mistake (mistake exists on either of the parties) and b) Bilateral mistake (i.e. mistake exists on both the parties to the contract).

7. Lecture VII deals with 'Legality of object' or lawful object, which is one of the most essential elements for the validity of a contract. If the object is not lawful/illegal, the contract is declared void. All contracts, which are entered into with unlawful consideration (Eg. A offers B Rs. 10,000/- to beat/ stab C) or without lawful object (Eg. A and B enter into contract to do some illegal/prohibited business) are declared void. In other words, all contracts, which are opposed to the public policy or public welfare are declared void. Such void contracts are namely –

   i) **Agreement in restraint of Trade (Sec. 27)**:- Eg. A and B are cloth merchants in the same place i.e. their cloth shops are located side by side. A promises to give B Rs. 50,000/- to close the business and go away and B agrees to it, the contract is void and not enforceable.

ii) **Agreement in restraint of marriage (Sec. 26):--** Eg. A promises B to promote him as Manager (or give him Rs. One Lakh) if he (B) remains unmarried or he (B) does not marry C (A's opponent/enemy). It is void and not enforceable.

iii) **Agreements in restraint of legal proceedings (Sec. 28):--** Eg. Parties to the suit can sue and be sued as per the rules of law. So, one party should not insist the other party to the contract to enter into an agreement to restrain from enforcing his rights under the contract. In other words, there is no contract, if the agreement restrains either of the parties to sue in the event of the breach by the other party. Such agreement is void and not enforceable (Sec. 29).

iv) **Agreements void for uncertainty (Sec. 29):--** A contract to be valid and enforceable, the terms of the contract/offer must be clear and certain. Otherwise, it is void (not valid). Eg. A sells different kinds of oils viz. coconut oil, groundnut oil, sunflower oil etc. B asks A to send 100 tins of oil without mentioning the name of the oil, the terms of the contract are not certain and is not enforceable.

v) **Agreement to commit crime:--** An agreement to commit crime is an illegal contract. An illegal contract is one, which is immoral or against the law. An illegal contract is void and also a crime under Section 120-A (Criminal Conspiracy) of the Indian Penal Code. It is not only void but also an offence. However, every void contract is not illegal.

Example: 'A' and 'B' enter into an agreement to commit an illegal act (to carry on some business or to undertake some work, forbidden by law) or a legal act by illegal means (eg. admission into Engineering/Medicine ignoring/violating the rules/merit.).

vi) **Agreement with Alien :** When there is a war between two countries, it is unlawful and against public policy that a person should trade with a subject of the enemy country. "The King's subject cannot trade with an alien enemy, i.e. a person owing allegiance to the Government at war with the King, without the King's licence". During the war it is unlawful either to enter into such a contract, or to perform a contract entered into before the war broke out. If agreements with the enemy country are not made unlawful, then the commercial transactions between the two countries may have the effect of promoting economic interest of the enemy country and prejudicing the interest of one's own. If some rights in respect of a contract have already accrued, the outbreak of the war does not put an end to those rights but their enforcement is suspended until the hostilities are over.

vii) **Wagering Agreement (Sec. 30):--** The term 'wager' means 'Bet'. Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made. According to Section 30 of the Indian Contract Act, 1872 wagering agreements are void.

8. Lecture VIII deals with Wagering Agreements (Sec. 30) and Contingent Contracts. The term 'wager' literally means "bet". A wagering contract is one by which the parties to the contract express two opposite views as to the happening of an uncertain event. Eg. A bets with B Rs. 50,000/- that a particular political party will get majority and form the Government. B accepts the same with a hope that it will not get the majority and form the Government. It is a wagering contract. It is void and not enforceable.

In wagering contract, neither of the parties has any interest in the contract other than the sum, he will so win or lose, there being no other real consideration and hence, the agreement is void.

Chapter III containing sections 31 to 36 deals with "contingent contracts". The expression 'contingency' means "something related to a possible future and uncertain event". Eg. A promises B to transfer his property if he (B) marries C. Here, B's interest in the property is contingent. One more example for contingent contract is, fire insurance contract.

9. Lecture IX deals with "Discharge of Contracts". When a contract is created, it imposes obligations on the parties to the contract (In a contract of sale, the seller has an obligation to sell and the buyer has an obligation to purchase by making payment). When the contractual obligations come to an end, the contract is said to be discharged. In other words, 'discharge of contract' means "termination of contractual relationship between the parties". A contract may be discharged in positive (i.e. by performance of the contractual obligations by the parties) or in negative (i.e. by breach of contract, which means "failure to perform contractual obligations by the parties to the contract"). This chapter contains different modes of the discharge of contract viz. performance, breach novation, frustrations etc.

10. Lecture X deals with "Quasi-Contracts" or "Certain relations resembling those created by contract". A contract emerges from an agreement between two or more parties. In other words, a contract is an outcome of an agreement and is enforceable in the court of law. But, a quasi-contract is not a contract in reality. It resembles a contract and looks like a contract. It does not emerge out of an agreement between the parties. It emerges from the principle of equity that no one shall enrich any benefit at the expense of another. Like a contract, quasi-contract also is enforceable

in the court of law. Eg. A left/forgot his handbag containing Rs. 10,000/- at B's shop. B has a duty or quasi-contractual obligation to return/hand over the bag to A. If B does not do so, it amounts to breach of quasi-contractual obligation. This chapter contains five sections (Section 68 – 72) dealing with five kinds of quasi-contracts.

11. Lecture XI deals with various remedies available to an aggrieved party to the contract in the event of breach of contract by the other party to the contract namely, rescission or suit for specific performance or damages or injunction or quantum meruit. The term 'remedy' literally means relief or compensation. In a contract, both the parties have to fulfill their respective contractual obligation. If one party fails to perform the contractual obligation, it amounts to breach of contract, which results in/causes injury or damage to the other party. The aggrieved or injured party will have a cause of action to sue the other party for a remedy (one of the remedies) viz. specific performance or injunction or damages or quantum meruit or other remedy/relief.

LECTURE-II

ELEMENTS OF CONTRACT

This lecture covers :

1. Contract : Meaning and Definition
2. Essentials of Contract.
   - i) Two parties (Offeror Sec. 2(a) & Acceptor Sec. 2(b));
   - ii) Consensus-ad-idem (Identity of Minds);
   - iii) Capacity to Contract (Sec. 11);
   - iv) Free Consent (Sec. 14);
   - v) Lawful Consideration (Sec. 2(d));
   - vi) Legal Relationship;
   - vii) Lawful object (Sec. 23);
   - viii) Terms must be certain; and
   - ix) Possibility of Performance.
3. Kinds of Contracts.
   - i) Valid Contract
   - ii) Void Contract
   - iii) Voidable Contract
   - iv) Unenforceable Contract
   - v) Illegal Contract

Introduction:-- The law relating to contracts is governed by the "Indian Contract Act, 1872". It came into force from 1st September 1872. It extends to the whole of India.

Originally, the Act contains 266 Sections. Section 1 to 75 (including Sections 19-A, 19-B and 19-C), which deal with 'General Principles' are prescribed for study in the present subject "Contracts-I".

The remaining sections i.e. from Sec. 76 to Sec. 123 which dealt with 'Sale of Goods' is repealed and replaced by the "Sale of Goods Act, 1930". Sections 124 to 238 deal with certain specific contracts viz. the Contracts of Indemnity and Guarantee (Ss. 124 to 147), Contracts of Bailment and Pledge (Ss. 148 to 181), the Contract of Agency (Ss. 182 to 238) and Sections 239 to 266 repealed by Sec. 73 and Schedule II of the Indian Partnership Act, 1932, are studied in the other subject, "Contracts –II" or "Special Contracts".

1. CONTRACT : MEANING, DEFINITION

Meaning:-- The term 'Contract' is derived from the Latin word 'Contractum', which means "drawn together". It is "an agreement entered into between two or more persons/parties subject to certain terms and conditions for a lawful consideration". Eg. 'A' and 'B' enter into an agreement. 'A' promises 'B' to sell his house for Rs. 50,000/- and 'B' accepts to purchase it for the said amount. It is a contract between 'A' and 'B'.

In a contract, there are two parties namely the promisor or offeror (i.e. 'A' in the above example). The other party is promisee or acceptor (i.e. 'B' in the above example). In the above example 'A' and 'B' entered into an agreement. The agreement is enforceable and hence, it is a contract. (Enforceability means : if one party in the contract, fails to perform his contractual obligation, the other party can file a suit against him for fulfillment of the obligation. In the above example, if 'A' fails to sell the house, it amounts to breach of contract and 'B' can approach the court. Similarly 'A' can approach the court if 'B' fails to purchase the house).

In certain contracts like a 'contract of guarantee', there are three parties namely : (1) Principal Debtor; (2) Creditor; and (3) Guarantor or Surety.

Definition of Contract (Section 2 (h) & Section 10)

Section 2(h) of the Indian Contract Act, 1872 defines a contract as "an agreement enforceable by law". Thus, for the formation of a contract, there must be –

i) an agreement and

ii) the agreement should be enforceable by law.

Agreement = Offer + Acceptance
Contract = Agreement + Enforceability

The conditions for enforceability are lawful consideration under sec. 2(d) and sec. 25., competence of parties under sec. 11 and 12., free consent under sections 13 to 22 and lawful object under sections 23 to 30.

Now the question is : What is an agreement ?

Agreement:-- Sec. 2 (e) of the Act defines agreement as "Every promise and every set of promises forming the consideration for each other, is an agreement".

To constitute an agreement :

i) There must be at least two parties.

ii) There must be a proposal or offer from one person/party.

iii) There must be an acceptance from the other person/party.

In the above example, 'A' offered to sell his house and 'B' accepted to purchase the same. 'A' is called 'Offeror' and 'B' is 'Acceptor'. Proposal or Offer becomes Promise when it is accepted.

Section 10:-- According to Section 10 of the Indian Contract Act, 1872, "All agreements are contracts, if they are made by the free consent of the parties, competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void."

In other words, when two or more competent parties (Sections 11 and 12) freely consented (sections 13 to 22) to enter into an agreement not declared void with a lawful object (sections 23 to 30) for a lawful consideration (sections 2(d) and section 25), the contract is said to be a valid contract under Sec. 10 of the Indian Contract Act, 1872.

Distinction between Contract and Agreement :

Contract	Agreement
i) It emerges from an agreement	i) It emerges from consent of the parties.
ii) Secs. 2(h) and 10 define Contract.	ii) Sec.2(e) defines an agreement.
iii) Every contract is an agreement.	iii) Every agreement is not a contract.
iv) It is always legal and is enforceable.	iv) It may be moral and may not be enforceable.

Essentials of Contract (Section 10)

As stated above "Contract is something more than an agreement." Therefore, it is said that "all contracts are agreements, but all agreements are not contracts." To constitute a contract the following conditions are to be satisfied.

i) Two parties (Offeror Sec. 2(a) & Acceptor Sec. 2(b));
ii) Consensus-ad-idem (Identity of Minds);
iii) Capacity to Contract (Sec. 11);
iv) Free Consent (Sec. 14);
v) Lawful Consideration (Sec. 2(d));
vi) Legal Relationship;
vii) Lawful object (Sec. 23);
viii) Terms must be certain; and
ix) Possibility of Performance.

i) Two parties (Offeror Sec. 2(a) & Acceptor Sec. 2(b)):- To constitute a contract, there must be an offer and acceptance. The person who offers or makes offer is called "Offeror" and the other party/person who accepts the offer is called "Acceptor". Therefore in every contract, there must be at least two parties namely, the offeror and acceptor. The offer and acceptance must be communicated properly to each other.

ii) Consensus-ad-idem (Identity of Minds):-- A contract to be valid, there must exist consensus-ad-idem. It means identity of minds between the parties to the contract. In other words, both the parties to the contract must have agreed/consented about the subject in the same sense and at the same time. In the absence of the consensus between/among the parties, the contract is declared null and void.

Example : 'A' has two houses namely 'X' and 'Y'. 'A' offers to sell 'X' to 'B'. 'B' accepts thinking that it is 'Y'. Here, there is no identity of minds, and hence it is not enforceable.

iii) Capacity to Contract (Sec. 11):-- The parties to the contract must be competent to enter into a contract. According to Sec. 11 of the Indian Contract Act, any person is competent to contract provided -

i) He is a major (not a minor);

ii) He is of sound mind (not of unsound mind);

iii) He is not disqualified by law in force to contract.

According to section 3 of the Indian Majority Act, 1875 a minor is a person who has not completed the age of 18 years. The age of minority extends to 21 years if a guardian of a minor's person or property is appointed (under the Guardians and Wards Act, 1890).

In England, a person below the age of 21 years was a minor till 1969. With the passing of the Family Reforms Act, 1969, the age limit was reduced from 21 to 18. Now, in England also, a person below the age of 18 years is a minor.

A contract entered into with a minor is void *ab initio* (invalid at the very beginning) as laid down in a leading case of *Moharibibee v. Dharmadas Ghose* (1903) 30 I.A. 114 (PC).

iv) Free Consent (Sec. 14):-- According to Sec. 13 of the Indian Contract Act, "Two or more parties are said to consent, when they agree upon the same thing in the same sense and at the same time". Consent is said to be free, when it is not caused by flaws in consent viz. coercion or undue influence or fraud or misrepresentation or mistake.

Section 14 of the Act defines 'Free Consent' as Consent is said to be free, when it is not caused by:

i) Coercion as defined in Sec. 15; or
ii) Undue influence as defined in Sec. 16; or
iii) Fraud as defined in Sec. 17; or
iv) Misrepresentation as defined in Sec. 18; or
v) Mistake, subject to the provisions of Ss. 20, 21 & 22.

v) Lawful Consideration (Sec. 2(d)):-- Consideration is one of the most essential elements for formation of a contract. It means "something in return". It is a price for the contract. It refers to both the parties. A contract to be valid and enforceable, there must be a lawful consideration. Eg. A sells his house to B for Rs. 10 lacs. Here, A's lawful consideration is Rs. 10 lacs. Similarly, B's lawful consideration is the house. Therefore, it is said that "a contract without consideration is void". In other words, a contract without consideration is not valid and enforceable. Therefore, it has been contained/enshrined in the Latin maxim that '*Ex nudo pacto non oritur actio*', which means 'out of a nude fact, no cause of action arises'. In other words 'a contract without consideration is void'.

However, there is an exception to this general rule under Sec. 25 of the Indian Contract Act, 1872 as stated below –

i) Love and Affection (Sec. 25 (1))

ii) Compensation for Voluntary Services (Sec. 25(2)) and

iii) Time barred debt (Sec. 25(3)).

Consideration may be past (Eg. A paid Rs. 10000/- to B to perform a lawful work), present (A pays Rs. 10000/- to B to perform a lawful work) or future (A promises B to pay Rs. 10000/- to perform a lawful work) in India. But in England present or future consideration is valid and past consideration is not valid. In other words, past consideration is no consideration.

vi) Legal Relationship:-- A contract to be enforceable, it must create legal relationship between/among the parties. Mere domestic or social agreements do not give rise to create legal relationship/consequences. For instance, a lawfully wedded wife is entitled to enforce her claim of maintenance by filing a suit against her husband. However, she cannot sue her husband for pocket money or other things outside the legal necessity (Eg.Costly jewellery, car etc.). The relevant leading case on this point is :

***Balfour v. Balfour,* (1919) 2 K.B. 571:--** The defendant in the instant case was a civil servant in Ceylon. When he left for England, he promised his wife (plaintiff) to send 30 pounds per month. But he did not send the amount. The plaintiff filed a suit against her husband. It was held that the suit is not actionable/maintainable on the ground that it does not give rise to legal consequences.

Another leading case on this point is –

***Harvey v. Facey,* (1893) A.C. 552:--** The defendants were the owners of a plot of land known as Bumper Hall Pen. The plaintiffs being interested in purchasing the same, sent a telegram to the defendants, "Will you sell us Bumper Hall Pen? Telegraph lowest cash price". The defendants in reply telegraphed.

"Lowest price for Bumper Hall Pen, 900 pounds". The plaintiffs sent another telegram to the defendants saying, "we agree to buy Bumper Hall Pen for 900 pounds asked by you. Please send us your title deeds."

The plaintiffs contended that the second telegram from the defendants quoting lowest price was an offer and the same had been accepted by the plaintiffs, and the contract was complete. The defendants, on the other hand, contended that quoting the price was not an offer which could be accepted. The judicial committee of the Privy Council held that exchange of the above stated telegram had not resulted in a contract. It was observed that the first telegram had asked two questions, one regarding willingness to sell, and the other regarding the lowest price. In reply only the lowest price was quoted, and this quoting of the price was not an offer. The third telegram from the plaintiffs saying, "We agree to buy" was only an offer and not the acceptance of an offer. Since this offer had not been accepted there was no binding contract between the parties.

Badri Prasad v. State of Madhya Pradesh **(AIR 1970 SC 706):--** The Divisional Forest Officer wrote to the plaintiff : "Kindly inform whether you are ready to pay further Rs. 17,000/ for the contract of big trees.....which (contract) is under dispute at present. The contract can be given to you on this compromise only....On receipt of your reply the State Government will be informed."

In reply to the above letter the plaintiff wrote back : "I am ready to pay Rs. 17,000/- provided my claim to have the refund of Rs. 17,000/- already paid, from the owner of the village or any other relief consequential to the judgement of that case remains unaffected.....subject to those conditions I shall pay Rs. 17,000/ - as required in your referred letter."

The Supreme Court held that by those letters no contract had been concluded between the plaintiff and the Government. The letter from the Divisional Forest Officer seemed to be merely invitation to offer rather than offer. The letter in reply from the plaintiff was an offer. It was further observed that even if the letter from the Divisional Forest Officer to the plaintiff is treated as an offer, there is no unconditional acceptance from the plaintiff and as such there is no contract in any case.

vii) Lawful object or Legality of Object (Sec. 23):-- A contract to be valid, the object for which it has been entered into must be lawful. According to Sec.23 of the Indian Contract Act, 1872, "an agreement entered into with lawful consideration or object is declared void" if it is :

i) forbidden by law; or
ii) defeats any provision of law; or
iii) fraudulent; or
iv) causing injury to person or property of another; or
v) immoral or opposed to public policy.

An agreement entered into **against the interests of general public** is deemed to be **opposed to public policy.** In other words, an agreement, which is **harmful to public welfare is said to be opposed to public policy.** Such agreements are:

i) Agreement in restraint of Trade (Sec. 27).
ii) Agreement in restraint of Marriage (Sec. 26).
iii) Agreements in restraint of Legal Proceedings (Sec. 28).
iv) Wagering Agreement (Sec. 30).
v) Agreement to commit a Crime.
vi) Agreement with Alien.

viii) Terms must be certain (not vague):-- The terms and conditions of the contract shall be clearly furnished in the agreement without any ambiguity or vagueness. In other words, the terms of the contract must be clear and certain. Otherwise, the contract is not valid and enforceable.

Example: A offers B to supply 100 tons of oil. In the above example, the terms of offer are not clear, since the nature of oil (whether coconut oil or groundnut oil etc.) is not mentioned. Relevant leading case on this point is :

***Taylor v. Portington,* (1855 (44) E.R. 1130):--** The plaintiff in the instant case (A) promised to take defendant (B)'s house

on lease for a period of three years provided, "it is thoroughly repaired and the drawing rooms are decorated according to the present style". It was held to be not enforceable, since the terms are too vague and uncertain.

Chatterjee J in Dwarkadas v. Dholu Ram Gogunmall **(AIR 1951 Cal. 10)** observed –

"In order to constitute a valid contract the parties must so express themselves that their meaning can be determined with a reasonable degree of certainty. It is plain that unless this can be done it would be impossible to hold that the contracting parties had the same intention; in other words, the consensus *ad idem* would be a matter of mere conjecture. This general rule, however, applies somewhat differently in different cases. In commercial documents connected with dealings in a trade with which the parties are perfectly familiar the court is very willing, if satisfied that the parties thought that they made a binding contract, to imply terms and in particular terms as to the method of carrying out the contract which it would be impossible to supply in other kinds of contract."

ix) Possibility of Performance:-- One of the essential elements of a contract is 'Possibility of Performance'. If the performance of a contract is impossible, it is void. In other words, impossibility of performance renders the contract void. Thus Section 56 of the Indian Contract Act lays down that, "an agreement to do an act impossible itself is void."

Example:-- A contract to construct a building within two days.

(The above elements of contract are discussed in detail in the subsequent lectures/chapters viz. Offer and Acceptance in Lecture III, Consideration in Lecture IV, Capacity to Contract in Lecture V, Free Consent in Lecture VI, Legality of Object in Lecture VII and so on).

3. KINDS OF CONTRACTS

On the basis of validity, contracts may be classified as follows:

1. Valid Contract
2. Void Contract
3. Voidable Contract
4. Unenforceable Contract
5. Illegal Contract

1. Valid Contract (Sec. 2(h) & 10):-- A contract is said to be valid if it can be enforceable in the Court of Law. According to Sec. 2(h) of the Indian Contract Act, 1872, "an agreement enforceable by law is a contract". Therefore, to constitute a contract –

i) there must exist an agreement and

ii) the agreement should be enforceable by law.

A contract to be enforceable, it must contain the constituents enshrined in Sec. 10 of the Indian Contract Act, 1872. According to Sec. 10 of the Act, a contract is said to be valid, if two (or more) competent parties freely consented to enter into an agreement not declared void with a lawful object for a lawful consideration. Section 10 runs as follows –

All agreements are contracts, if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in India and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

Every contract is an agreement, but every agreement is not a contract. An agreement becomes a contract when the following conditions are satisfied :

i) There is some consideration to contract. [S.2(d) and S.25]
ii) The parties are competent to contract [Ss.11 and 12]
iii) Their consent is free [S.13-22]
iv) Their object is lawful. [Ss.23-30]

2. Void Contract (Sec. 2 (g)):-- "A contract, which is not enforceable by law is a void contract". Void contract is an agreement without any legal effect and is void *ab initio* or it becomes void subsequently. According to Sec. 2(g) of the Indian Contract Act, 1872 " An agreement not enforceable by law is said to be void".

Eg. : Contract with a minor.

The Privy Council in *Mohribibi v. Dharmadas Ghose,* (1903 30 IA Cal. 539) laid down that, "a contract entered into with a minor is void *ab initio*" i.e. not enforceable.

Sections 24 to 30 and 56 of the Indian Contract Act, 1872 lay down the provisions relating to the agreements, which are declared void as stated below –

i) Agreements of which consideration and objects are unlawful in part [S.24];
ii) Agreements without consideration [S.25];
iii) Agreements in restraint of marriage, [S.26];
iv) Agreements in restraint of trade, [S.27];
v) Agreements in restraint of legal proceedings, [S.28];
vi) Unmeaning agreements, [S.29];
vii) Wagering agreements, [S.30]; and
viii) Agreements to do impossible acts, [S.56].

Illustrations:-- (i) A promises to obtain for B an employment in the public service, and B promises to pay 1000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(ii) A promises B to drop a prosecution which he has instituted against B for robbery and B promises to restore the

value of things taken. The agreement is void, as its object is unlawful.

3. Voidable Contract (Sec. 2(i)):-- Voidable contract is something different and peculiar. One of the parties to the contract alone will have an option to repudiate/challenge/cancel the contract. If it is challenged, it may be declared void. If it is not challenged, it may be allowed to continue as valid.

Sec. 2(i) defines voidable contract as "an agreement, which is enforceable by law at the option of one or more parties thereto, but not at the option of the other or others, the contract is said to be voidable.

Example:-- A contract entered into out of coercion, undue influence, fraud, misrepresentation, mistake etc, is said to be voidable. According to Sec. 19 of the Indian Contract Act, 1872.

When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the misrepresentation made had been true.

Therefore, in case of a voidable contract, one party has an option to avoid the contract, while the other party has no such option to avoid the contract.

Distinction between void and voidable contracts

Void Contract	Voidable Contract
1. Section 2 (g) defines void contract.	1. Section 2(i) defines voidable contract.
2. It is not at all enforceable by law.	2. It can be enforceable at the option of one of the parties.

4. Unenforceable contract:-- An unenforceable contract is a contract, which is valid for all practical purposes until and unless its validity is challenged/questioned. It cannot be enforced due to some technical defect. It can be enforced in future after the technical defect is removed/cured.

Example:-- When a contract remains unenforceable for want of registration, it becomes enforceable in future after registration.

5. Illegal Contract:-- An illegal contract is one, which is immoral or against the law. An illegal contract is void and also a crime under Section 120-A (Criminal conspiracy) of the Indian Penal Code. It is not only void but also an offence. However, every void contract is not illegal.

Example:-- 'A' and 'B' enter into an agreement to commit an illegal act (to carry on some business or to undertake some work, forbidden by law) or a legal act by illegal means (Eg. admission into Engineering/Medicine ignoring/violating the rules/ merit).

Questions and How to Answer

Q. What is contract? What are its elements? (A.U., Model Q.P. Part-A, Q. 1 and A.U. July, 2000 Part-A, Q.1).

Ans.: Write the meaning, definitions and elements of contract. If it is asked in Short Question, it should be in brief. If it is asked as an essay question it must be in detail.

Q. An agreement enforceable by law is a contract - Discuss.

Ans.: This question refers to Section 2(h) of the Indian Contract Act, 1872, which defines contract as "*an agreement enforceable by law*".

An agreement (i) may be enforceable or

(ii) may not be enforceable.

(i) Those agreements, which give rise to legal consequences and fulfil the conditions under Section 10 of the Indian Contract Act are valid contracts and are enforceable.

(ii) However, those agreements which are not legal, but moral (i.e. do not give rise to legal consequences) are not valid contracts and hence are not enforceable.

This question can be answered in an effective way by explaining the meaning, definition and elements of contract as follows: (Now, write meaning, definition and elements of contract).

Q. All contracts are agreements; but all agreements are not contracts (S.V.U., November 1999, Part-B, Q. 10).

Ans.: The statement "All contracts are agreements, but all agreements are not contracts", is correct. The reason is, an agreement:

(i) may be enforceable or

(ii) may not be enforceable.

Those agreements, which are enforceable are contracts.

Sec. 2(h) of the Indian Contract Act says that "an agreement enforceable by law is a contract".

(ii) However, those agreements, which are not enforceable, would remain as agreements (but not contracts) and hence, cannot be enforceable.

To justify the truth of the above statement, the meaning, definition and elements of contract are explained below:

(write now, the meaning, definition, elements of contract).

Q. "The Law of Contract is not the whole law of agreements nor is it the whole law of obligation" - Discuss. (A.U. Sept. 99 Part-B, Q.1).

Ans.: According to Salmond, "The Law of Contract is not the whole law of agreements nor is it the whole law of obligation".

This quotation implies that "All contracts are agreements, but all agreements are not contracts".

Q. Define contract and distinguish it from agreement (N.U., April 99, Part-A, Q.1).

Ans.: Write the definition of contract under Sec. 2(h) and 10 and then write the distinction between the two.

Q. Agreement (S.V.U., Nov. 99, Part-A, Q.1).

Q. What is the distinction between void and voidable agreements. (N.U., April 99, Part-A, Q.2).

Ans.: Write about void and voidable contracts and distinction between the two.

LECTURE-III

OFFER AND ACCEPTANCE

In a contract, there are two (or more) parties. One party makes an offer and he is called **'Offeror'**. The other party accepts the offer and he is called **'Acceptor'**. Sections 2(a) and 2(b) of the Indian Contract Act, 1872 define offer and acceptance respectively. Offer and Acceptance are two constituents of a contract.

Therefore, offer and acceptance are very essential for the formation of a contract. Proposal or offer becomes promise, when it is accepted.

Example: 'A' intends to sell his house to 'B'. In other words, 'A' offers to sell his house to 'B'. Here 'A' is offeror and 'B' is offeree. Offeree is called acceptor after acceptance of the offer.

This lecture deals with:—

1. Offer (Sec. 2(a)
   - i) Meaning and Definition
   - ii) Essential Elements
     - General and Specific Offer
       (*Carlil v. Carbolic Smokeball Co. Ltd.*)
     - Offer and Invitation to Offer
       (Harvey v. Facie)
     - Communication of Offer
   - iii) Revocation of Offer
   - iv) Cross Offers
   - v) Standing or Open or Continuing Offer.

2. Acceptance
   i) Meaning and Definition
   ii) Essential Elements
   - Communication and Revocation of Acceptance
   - Case comment.

1. OFFER

i) Meaning & Definition:— The term 'offer' is also called 'proposal'. It is the first step in formation of a contract. Any contract emerges from the proposal. In other words, offer is the starting point for formation of any contract. The person who makes the offer is called as 'offeror'. The person to whom the offer is made is called as 'offeree'. The offeror and offeree must be two distinct personalities. An offeror cannot make an offer to himself and thereby make himself an offeror well as offeree.

Eg. A intends to sell his goods to B for Rs. 100/- and proposes or makes a proposal to B. Here, A is called proposer or promisor or offeror. B is called promisee or offeree.

Section 2(b) defines 'promise' as " When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise.

Section 2 (c) defines promisor and promisee as " The person making the proposal is called the 'promisor', and the person accepting the proposal is called the 'promisee'.

How long an offer remains open?

(i) An offer remains open until it is accepted. As soon as an offer is accepted, it ceases to be an offer and becomes a promise.

(ii) An offer remains open until it is rejected by the person to whom it is made. Offer once rejected cannot be accepted again unless a fresh offer is made.

Section 2(a) of the Indian Contract Act, 1872, defines offer as follows:

"When one person signifies to another, his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a Proposal."

The term 'proposal' used in the Indian Contract Act is synonymous with the term 'offer' used in English law. The willingness to do or to abstain from doing something, i.e. the proposal or the offer may be made with a view to obtaining the assent of the other party thereto. For example, A's willingness to sell his radio set to B for Rs. 500 if B accepts to purchase the same, amounts to proposal by A for the sale of the radio set. But if a statement is made without any intention to obtain the assent of the other party thereto, that cannot be termed as proposal.

ii) Essential elements of a valid offer:-- An offer to be valid and enforceable, the following conditions are to be satisfied:

1. Offer may be express or implied;
2. It must create legal relations;
3. Terms must be certain or clear;
4. It may be specific or public;
5. Offer and Invitation to offer ;
6. It must be communicated to offeree.

1. Offer may be express or implied:-- An offer may be express or implied. If the offer is made by words, it is called 'express offer'. If the words are spoken, it is called 'oral offer'. If the words are written, it is called 'written offer'. In case, no words are used, but the offer is derived from the conduct of the parties, it is called 'implied offer'. Whether it is express or implied it is valid. It may be oral or written.

2. It must create legal relations:-- An offer to be enforceable, it must create legal relations. An offer for social or moral act is no offer.

Example: 'A' invites 'B' for lunch and failed to arrange the same. 'B' cannot sue 'A', as it does not create legal obligation. Relevant case on this point is:

***Balfour v. Balfour,* (1919) 2 KB 571.**

Facts of the case:-- The defendant in the instant case was a civil servant at Ceylon. When he left for England, he promised his wife (plaintiff) to send 30 Pounds per month But he did not send the amount as promised. The plaintiff (wife) filed a suit against her husband.

Decision/Judgment:-- Lord Atkin dismissed the above suit as it is not actionable/maintainable on the ground that it does not give rise to legal consequences.

Issue/Question involved:-- The issue or question involved in the instant case is, "whether the said agreement between the husband and wife for monthly allowance gives rise to create any legal relationship for enforceability?

Reasons/Reasoning:-- An agreement to be enforceable, it must give rise to legal relation/consequences. Social agreement/ contract does not create legal relationship between/among the parties.

Lord Atkin in the instant case, observed: "*There are agreements between parties, which do not result in contracts within the meaning of that term in our law*. The most usual forms of agreement, which do not constitute a contract are the agreements made *between husband and wife. They are not contracts,* because, the parties do not intend that they should be attended by legal consequences." Therefore the suit was dismissed.

***Rose and Frank C. v. Crompton & Bros. Ltd.*, (1925) A.C. 445:** In this case, the agreement between the parties to the contract provided that :

"That arrangement is not entered into.....as a formal or legal agreement, and shall not be subject to legal jurisdiction in the Law Courts.....that it (the agreement) will be carried through by the parties with mutual loyalty and friendly co-operation."

One of the parties made a breach of this agreement. In an action by the other party to enforce the agreement, it was held that since the agreement had provided that it was not a formal or legal agreement the same was not enforceable.

In ***S.V.R. Mudaliar v. Rajababu,* AIR 1995 SC 1607**, it has been held by the Supreme Court that even if an agreement is described as gentleman's understanding, yet if there is a clear agreement that the property which is being conveyed will be re-conveyed to the vendor, the agreement is binding and there is no need to prove that there was intention to create legal relationship, because that is presumed in such a case.

Hansari, J. observed : "It is not possible to accept the argument that an agreement will not, by itself, yield legal obligations unless it is one which can reasonably be regarded as having been made between the parties in contemplation of legal consequence."

3. Terms must be clear and certain:-- The terms of the offer must be clear and certain, and must not be vague.

In India, Section 29 of the Contract Act provides, "Agreements, the meaning of which is uncertain, or capable of being made certain, are void." For example, A agrees to sell to B hundred tons of oil. There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty. Similarly, where A agrees to sell to B "my white horse for rupees five hundred or rupees one thousand", the agreement will be void because there is nothing to show which of the two prices was to be given.

***Taylor v. Portington* (1885) 109 R.R. 107:** The plaintiff in the instant case (A) promised to take defendant (B)'s house on lease for a period of three years, provided, "it is thoroughly repaired and the drawing rooms are decorated according to the present style". It was held to be not enforceable, since the terms are too vague and uncertain.

4. It may be specific or public:-- (Imp. for short notes/ question) When an offer is made to a person or group of persons, it is called **'Specific Offer'.** If it is made to the public in general or society or community as a whole, it is called **'Public Offer'.** The specific offer can be accepted by the person or persons to whom it is made. The general offer can be accepted by any person. Relevant leading case on this point is:

***Carlill v. Carbolic Smoke Ball Co.* (1893) 1 QB.256 :**

The defendant Co. advertised a reward of 100 Pounds, to any person who suffers from **influenza** even after using their 'smoke ball' medicine as per printed directions. For this purpose, they deposited 1,000 Pounds in a bank. The plaintiff sued the defendant for the reward. Held that the defendant was liable.

In India Section 8 of the Contract Act provides :

"Performance of the conditions of a proposal, or acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal."

Thus there may be a general offer or an offer can be made to the whole world but it becomes a contract only when a specific person comes forward and accepts it or performs the conditions of the offer.

The principle laid down in *Carlill v. Smoke Ball Co.* was applied in a Calcutta case, namely, ***Hindustan Insurance Corporation Society v. Shyam Sunder,* AIR 1952 Cal. 691:**

In this case, an Insurance Company received a cheque sent by a new proposer who had been certified as medically fit. The

Insurance Co. neither communicated the acceptance of the proposal nor issued the policy. Two weeks after, the proposer died of pneumonia. Before the death of the said proposer, the Company had made an attempt to make the enquiries about the health of the proposer. The Company, however, in the meantime got the cheque encashed. The representatives of the deceased brought an action to recover the insured money. The company resisted the suit on the ground that it had not formally accepted the proposal. The Court pointed out that in this case, it will be deemed that the deceased had waived his right to the communication of the acceptance in the same way as was done by the Carbolic Smoke Ball Co. in the case of Mrs. Carlill.

One more case on the public offer is:

Har Bajan Lal v. Har Charan Lal **(1925):** The defendant in the instant case announced a reward through an advertisement to any person who would trace out his missing child. The plaintiff in response to the advertisement has tracedout and handed over the child to the defendant. In an action against the defendant, the court treated the advertisement as 'public offer' and held that the plaintiff was entitled to claim the reward.

Distinction between 'General Offer' and 'Specific Offer'

General Offer	Specific Offer
1. It is made to the public in general or society or community as a whole.	1. It is made to one person or group of persons.
2. It can be accepted by any one.	2. It can be accepted only by the person or persons to whom it is made.
3. Acceptance need not be expressed, the performance by the offeree according to terms of offer is sufficient to enforce the contract.	3. The offeror must express his acceptance to enforce the contract.

5. Offer and Invitation to offer:— Invitation to offer is no offer since it differs from the offer. It is an offer to receive an offer. Eg. Price list of goods to sell. Tenders and advertisements, for sale of goods.

In the above cases, persons make offers to purchase on seeing such price lists, show cases, tenders etc. A person on seeing an article in a show case enters into that shop and offers to purchase. Then, the shop keeper may accept to sell or refuse to sell it. If the shopkeeper/owner refuses to sell, he cannot be sued. The reason is, the act of shopkeeper in placing the article in a show case is not an offer, but an invitation to offer.

Thus, an invitation to offer is something precedent to offer. It is not an offer, but an act to draw the attention of others to get offer. A person, who extends an offer is called offeror, while a person who extends invitation to offer will have to be the acceptor if he accepts the offer (against his invitation to offer).

Thus, "A tender notice does not amount to an offer or proposal but merely an invitation to the contractors for making an offer. An advertisement for tenders is not a proposal which would bind the authority to sell to the person who makes the highest tender. It is merely an attempt to ascertain whether an offer can be obtained within such a margin as the seller is willing to adopt. The advertisement calling for tenders, therefore, is not a proposal within the meaning of the Contract Act but it invites a proposal.

The relevant leading English case on this point is:

***Harvey v. Facie* (1893) A.C. 552:** The plaintiff, Harvey wanted to purchase Bumper hall pen from Facie and enquired its price as 900 Pounds. The plaintiff communicated telegraphically to purchase it. But, there was no reply from the defendant (Facie). In an action against the defendant for specific performance, it was held not actionable on the ground that 'informing the price telegraphically is not an offer', but it is an invitation to the offer.

The Judicial Committee of the Privy Council dismissed the action and observed:

".....the mere statement of the lowest price at which the vendors would sell contains no implied contract to sell at that price to the person making the enquiry."

The Judicial Committee pointed out that in their first telegram the plaintiff wanted the reply of two questions; (i) the defendants willingness to sell and (ii) the lowest price. The defendants did not at all answer the first question. They simply quoted the lowest price which could amount only to invitation to an offer and not offer itself because they did not express their willingness to sell.

The principle enunciated in the above case has been approved and applied by the Supreme Court in ***Mac Pherson v. Appauna*, AIR 1951 SC 184.**

In ***Bank of India v. O.P. Swarankar etc.*, AIR 2003 SC 858, 876-877;** a three Judge Bench headed by C.J.I. G.B. Patanaik, has held that voluntary retirement scheme of the Bank is not proposal or offer but merely an invitation to treat and the applications filed by the Bank employees constitute an offer. Not only that the Bank has power to accept or reject such an application but it can also amend or rescind the scheme. The scheme cannot be said to be an offer, which on the acceptance by the employee fructifies in a concluded contract. The proposal of the employee when accepted by the Bank constitutes a promise within the meaning of Section 2(b) of the Indian Contract Act.

Since voluntary retirement scheme is an invitation to treat or offer, Bank employee who applies for such a scheme simply makes an offer. An offer can be withdrawn at any time before it has been accepted. On acceptance it fructifies into a concluded contract.

The relevant cases on this point are

***Badri Prasad v. State of Madhya Pradesh*, (AIR 1970 SC 706):** In this case, the Divisional Forest Officer wrote to the

plaintiff : "Kindly inform whether you are ready to pay further Rs. 17,000/- for the contract of big trees..... which (contract) is under dispute at present. The contract can be given to you on this compromise only.....On receipt of your reply the State Government will be informed."

In reply to the above letter the plaintiff wrote back :

"I am ready to pay Rs. 17,000/- provided my claim to have the refund of Rs. 17,000/- already paid, from the owner of the Village or any other relief consequential to the judgement of that case remains unaffected.....Subject to those conditions I shall pay Rs. 17,000/- as required in your referred letter."

The Supreme Court held that by those letters no contract had been concluded between the plaintiff and the Government. The letter from the Divisional Forest Officer seemed to be merely invitation to offer rather than offer. The letter in reply from the plaintiff was an offer. It was further observed that even if the letter from the Divisional Forest Officer to the plaintiff is treated as an offer, there is no unconditional acceptance from the plaintiff and as such there is no contract in any case.

***Harris v. Nickerson,* (1873) L.R. 8 Q.B. 286:** In this case, the defendant advertised a sale by auction. The plaintiff travelled to the advertised place of auction to find that the defendant had cancelled the auction sale. He brought an action against the defendant to recover the expenses of his travel. It was held that he was not entitled to the same as there was as yet no contract between the two parties, which could make the defendant liable.

***Chhotey Lal Gupta v. Union of India,* AIR 1987 All 329:** In this case, the appellant has submitted a tender to the respondent and the tender was to remain open up to 90 days and the appellant was not to resile before such period. The tender remained open till 9th October, 1966. The plaintiff by a letter dated 06.10.1966 refused to execute the work. The respondent Divisional Superintendent by his letter dated 07.10.1966 accepted the tender submitted by the appellant by adding a new condition. The Allahabad

High Court held that in view of the conditions imposed by the Divisional Superintendent in his letter, no concluded contract can said to have taken place and the appellant is entitled for the refund of security and earnest money deposit by him.

Moreover, as provided under Section 3 of the Act, the communication of proposals is deemed to be made by any act or omission of the party proposing by which he intends to communicate such proposal or which has the effect of communicating it.

In a recent case, ***Sultan Sadik v. Sanjay Raj Subba,*** **AIR 2004 SC 1377, 1384,** the Supreme Court observed that a contract of service, in the absence of any statute, is also governed by the provisions of any contract Act. It is therefore, not correct to contend that an order of appointment is not required to be communicated for making a valid contract of service. It is therefore, absolutely necessary to communicate such an order to the appointee by the State and acceptance thereof whether expressly or by necessary implications was also required. Unless this is done, contractual relationship will not come into being.

Distinction between Offer and Invitation to Offer

Offer	Invitation to Offer
1. It signifies intention or willingness to enter into a contract.	1. It does not signify such intention
2. It is made to get acceptance.	2. It is made to get offer.
3. It is a proposal precedent to acceptance.	3. It is something precedent to offer
4. It gives rise to legal consequences	4. It does not give rise to legal consequences

(P.S.: Standing Offer or Tender or Invitation to Offer is important for short notes/question.)

6. It must be communicated to the offeree (Communication of Offer):— An offer is valid, when it is communicated to the offeree (acceptor). The communication may be express or implied. It may be communicated by means of words of mouth, telegram, messenger etc. Communication of offer is complete, when it comes to the knowledge of the offeree. Relevant leading case on this point is:

***Laxman Shukla v. Gowri Dutt,* 1957 (40) CLR 227:** In this case, the defendant sent his servant (plaintiff) in search of his missing nephew. Later, he announced a reward to one, who could hand over his missing nephew. The plaintiff (defendant's servant) brought him and claimed the reward. In an action, against the defendant, it was held not enforceable on the ground that the offer (reward) was not communicated to the offeree.

***Williams v. Carwardine,* (1833) 4 B.& Ad. 621:** In this case, the plaintiff, who knew that reward had been announced to be given to anyone who gave information leading to the conviction of an assailant for murder, gave the necessary information. While giving the information, the plaintiff mentioned that she had given the information to ease her conscience. At that time she did not intend to claim the reward. She, however, subsequently brought an action to claim the same. It was held that since the offer had been accepted with its knowledge, there was a valid contract and, therefore, she was entitled to claim the reward.

The communication of an offer is complete as against the acceptor when such communication comes to the knowledge of the acceptor to whom it is made. The offeror when he has communicated his offer to the acceptor, he must be deemed to be making it continuously until such time it is brought to the knowledge of the acceptor that the offer so made is withdrawn. The communication of offer will result in any contract only when it is accepted by the acceptor to whom it is made.

The communication of acceptance is complete as against the offeror when it is put into course of transmission to him so as

to be out of power of acceptor. When the acceptor to whom the offer is made, puts his letter of acceptance on such offer in the course of transmission, the acceptance is complete and binding against the offeror and thus a contract is complete between the offeror and the acceptor.

Instances/Modes of Communication of Offer:—

1. When offer is communicated orally, it is complete, when it reaches the ear of the offeree.
2. If offer is made by post (letter), the communication is complete when the letter reaches the offeree.
3. If the mode of communication is telephone, communication of offer is complete, when the words reach the ear of offeree.

iii) Revocation of Offer/Proposal:-- According to Section 5 of Indian Contract Act, 1872, an offer or proposal may be revoked (withdrawn) at any time before the communication of its acceptance is complete (i.e. before the letter of acceptance is posted) against the proposer but not afterwards. For instance, 'A' offers to sell his house to 'B'. Before its acceptance by 'B', 'A' changes his mind and has withdrawn his offer to sell the house, it is called revocation of offer.

Similarly, A proposes, by a letter sent by post, to sell his house to B. B accepts the proposal by a letter sent by post. A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

***Rajendra Kumar Verma v. State of Madhya Pradesh*, AIR 1972 Madh.Pra. 131:** In this case, it has been held that a person who makes an offer is entitled to withdraw his offer or tender before its acceptance is intimated to him. The Government by merely providing a clause to the contrary in the tender notice could not take away the legal rights of a person.

Revocation of offer may take place under the following ways:

i) By the communication of notice of revocation by the proposer to the other party.

ii) By the lapse of the time prescribed in such proposal for its acceptance or if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance.

iii) By the failure of the acceptor to fulfil condition precedent to acceptance.

iv) By the death or insanity of the proposer if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Communication of Revocation of Offer/Proposal:-- According to Sec. 3 of Indian Contract Act, 1872, the communication of revocation of proposals, is deemed to be made by any act or omission of the party revoking by which he intends to communicate such revocation or which has the effect of communicating it.

According to Sec. 4 of the Indian Contract Act, 1872, communication of revocation of proposal/offer is complete and binding on the acceptor only when such communication comes to his knowledge. Eg. A revokes proposal by telegram.

The revocation is complete as against A when the telegram is despatched, and against B it is complete when he receives the telegram.

iv) Cross Offers:-- When two persons/parties make similar offers simultaneously to each other without the knowledge of the same, such offers are called 'Cross Offers'. Eg. 'A' offers to sell his house through a letter to 'B'. At the same time, 'B' also makes similar offer to 'A' to purchase his (A's) house. Such corresponding offers are called 'Cross Offers' and either of them cannot be regarded as an acceptance and hence, it is an inchoate contract (i.e. incomplete contract. The contract to be complete, a fresh acceptance from either of the two must be made).

Effect:-- Cross offers do not constitute an acceptance and hence are not binding. Cross offer to be binding and enforceable, either of the parties must accept.

Counter Offer:-- In the above example 'A' offers to sell his house for 2 lacs. Then 'B' offers to purchase it for 1-1/2 lacs only. It is called 'Counter Offer'. It is not binding.

Relevant leading case on this point is -

***Tinn v. Hoffmann*, (1873) 29 L.T. 271:** In this case, A wrote to B indicating his willingness to sell 800 tons of iron at 69 sh. per ton. On the same day, B also wrote to A offering to buy 800 tons of iron at the same rate of 69 sh. per ton. The two letters crossed each other in post. B brought an action against A for the supply of iron contending that a valid contract had been created between the two parties. It was held that in this case there were only two cross offers and the offer of neither of the parties having been accepted by the other, there was no contract which could be enforced.

v) Standing or Open or Continuing Offer:-- An offer which is allowed to remain open for acceptance over a period of time, is known as a standing, open or a continuing offer. For example, an offer to supply 1000 bags of wheat from 1st January to 31st December, in accordance with the orders which may be placed from time to time, is a standing offer. As and when the orders are placed that amounts to acceptance of the offer to that extent. In the above stated illustration if an order for the supply of 100 bags of wheat is placed on 15th January, there is acceptance of the offer to that extent and the offeror becomes bound to supply those 100 bags of wheat. So far as the remaining quantity is concerned, this offer can be revoked just like any other offer.

Tender for the supply of goods is a kind of standing offer. An advertisement inviting tenders is merely an invitation for quotations. When the tender is approved, it becomes a standing offer. As and when an order is placed on the basis of the tender

that amounts to acceptance of the offer and results in a binding contract. Such an offer may be revoked or withdrawn before the order has been placed. Even though the offer is originally made open till a particular time, it may be revoked earlier than that, because the offeror is not bound to keep the offer subsisting and he may revoke it at any time before its acceptance.

2. ACCEPTANCE

i) Meaning & Definition:-- Acceptance of an offer/proposal is very essential for formation/conclusion of a contract. Acceptance is the second stage in the formation of a contract.

A contract is created only after an offer is accepted. Before the acceptance is made neither party is bound thereby. At that stage the offeror is free to revoke or withdraw his offer, and the offeree is free not to accept the offer or to reject the same. After the offer has been accepted, it becomes a promise which, if other conditions of a valid contract are satisfied, binds both the parties to the promise. After acceptance, each party becomes legaliy bound by the promise made by him through the medium of offer and acceptance of it.

The effect of acceptance of an offer has been explained by Anson in the following words :

"Acceptance is to an offer what a lighted match is to a train of gunpowder. It produces something which cannot be recalled or undone. But the power may have lain until it has become damp, or the man who laid the train may remove it before the match is applied. So an offer may lapse for want of acceptance or be revoked before acceptance. Also the offeree may decide to reject the offer. Until an offer is accepted, it creates no legal rights, and it may be terminated at any time."

Just as when the lighted match comes in contact with gunpowder, there would be an explosion and then it will not be possible to bring the things back to the original position, similarly, after the offer is accepted, it creates a contract whereby both

the parties become bound and none of them can go back. What happens after explosion or after acceptance cannot be undone. There is a possibility that in course of time the powder may become damp or the train of gunpowder may have been removed, and in that event the damp powder or the one which has been removed, will not create any explosion. In the same way, the offer lapses if the same is not accepted within the prescribed time, or, if no time is prescribed, by remaining unaccepted until the expiry of the reasonable time, or else the offer could be revoked by notice of revocation by the offeree. Once the offer lapses or is revoked, it is incapable of being converted into a contract by being accepted. Thus, the acceptance of the offer, while the same is still alive, would result in a contract creating obligations for both the parties.

In a contract, one party makes proposal or offer and the other party has to accept. Then only the contract is valid and enforceable. In other words, acceptance of an offer is very essential for the validity of a contract. The person, who accepts the offer or proposal is called 'acceptor'.

Definition:— Section 2(b) of the Indian Contract Act, 1872 defines 'acceptance' as follows-

"when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted."

ii) Essential Elements:— An acceptance to be valid, the following conditions are to be satisfied.

1. An acceptance must be absolute and unqualified.
2. Acceptance should be expressed in usual or as per the prescribed mode/manner.
3. Reasonable time.
4. Before revocation of offer.
5. Must be communicated.

1. An acceptance must be absolute and unqualified:— The acceptance must be absolute and unqualified (unconditional). In other words, the terms of acceptance must be consistent with the terms of the offer.

Example: 'X' offers his house to 'Y' for lease from 1st April, 1994. But 'Y' accepts the offer provided the possession is offered from 1st March, 1994. It is no acceptance.

Sec. 7 of the Indian Contract Act, 1872 says that -

An acceptance gives rise to a binding contract only when it is unqualified and coincides in its terms with those of the offer.

The relevant English case on this point is -

***Hyde v. Wrench* (1840) 3 Beav.374:--** The defendant offered to sell his farm to the plaintiff for 1000 pounds, but the plaintiff said he would buy it for 950 pounds only. Later on he agreed to buy the farm for 1000 pounds. But the defendant refused to sell the farm. The plaintiff sued the defendant for specific performance of the contract. The Court dismissed his suit by holding that there was no contract for plaintiffs offer of 950 pounds. It was in fact a counter-offer which destroyed the original offer.

Thus offer and acceptance must be identical to each other. In ***Union of India v. M/s. Uttam Singh Dugal and Co. (Pvt.) Ltd.*, AIR 1972, Delhi 110, at p. 116** the High Court observed:

"When there is variance between the offer and acceptance even in respect of any material term, acceptance cannot be said to be absolute and the same will not result in the formation of a legal contract."

***M/s. Suraj Besam & Rice Mills v. Food Corporation of India*, AIR 1988 Delhi 224:--** In this case, plaintiff quoted for the purchase of 13576.884 M.T. of damaged paddy. Defendant, however, placed order by telegram for 6176.790 M.T. The Delhi High Court held that the acceptance under law should be absolute

and unconditional. In the present case, it was neither absolute nor unconditional because defendant accepted only part of the offer of the plaintiff.

2. Acceptance should be expressed in usual manner or as per mode prescribed:— The acceptance should be expressed in usual manner or as per the mode prescribed by the offeror.

(1) Where no mode prescribed.- Section 7(2) of the Indian Contract Act provides : "In order to convert a proposal into a promise, the acceptance must....be expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it is to be accepted."

Thus where no manner is prescribed the acceptance may be expressed in some usual and reasonable manner. For example, if an offer is made by post and no mode is prescribed the acceptance may also be made by post. But if A in Lucknow sends a proposal to B in Calcutta and B send a man with a letter of acceptance to walk down from Calcutta to Lucknow to communicate to A, it will not be usual and reasonable.

(2) Where mode is prescribed.-Where the offeror prescribes the mode or manner in which the offer is to be accepted, the acceptance must be made in the manner prescribed. The acceptance will not be valid if there is any departure or variance from the mode prescribed.

The relevant case on this point is -

***Eliason v. Henshaw* (1819) 4 Wheaton 225:--** In this case, the plaintiff made an offer to the defendant to buy some flour. He sent his offer through a wagon and requested the defendant to send the answer by the same wagon. Instead of sending his acceptance by the said wagon, he sent the letter of acceptance by mail thinking that it would reach earlier. But the letter reached after the arrival of the wagon. The plaintiff refused to purchase the flour. The Supreme Court of the United States holding that the plaintiff was entitled to refuse to buy the flour.

In India, if the acceptance is not made in the manner prescribed, it is the duty of the offeror to reject it within a reasonable time. If he does not reject it within a reasonable time, it will be presumed that he has accepted it. The provision is contained in Section 7(2) of the Contract Act which enacts the following:

"If the proposal prescribes a manner in which it is to be accepted, and acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner and not otherwise: but if he fails to do so, he accepts the acceptance.

3. Reasonable time:-- Offerer would normally remain his offer for a particular period. In the absence of specific period, the offer remains open for a reasonable period. The acceptance must be made within such specific or reasonable period.

***Ramsgate Victoria Hotel Co. v. Montefiore,* 1866 LR (1) Ex.109:--** In this case, the defendant offered to purchase shares in the plaintiff company by his letter dated 28th June. On 23rd of November he was informed that shares were allotted to him. It was held that the defendant could refuse to accept the shares on the ground that his offer had lapsed owing to the efflux of a reasonable time within which it could be accepted.

4. Before Revocation of offer:-- Offerer can revoke his offer before the acceptance. Therefore, acceptance must be made before such revocation.

An offer can be revoked at any time before the communication of acceptance is posted but not afterwards.

The relevant English case on this point is -

***Henthorn v. Fraser* (1892) 2 Ch. 27:--** In this case, the defendant offered to sell a certain property at a certain price and gave 14 days for acceptance. The next day at 1 p.m. he posted

a letter of revocation which reached the plaintiff at 5.30 p.m. It was held that the acceptance was complete and the contract concluded and consequently the defendant could not revoke it. Lord Herschell observed ".....a person who has made an offer must be considered as continuously making it until he has brought to the knowledge of the person to whom it was made that it is withdrawn." Thus, the notice of revocation must reach the acceptor before he has completed acceptance. Section 5 of the Indian Contract Act provides :

"A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards."

5. Must be communicated:-- An acceptance to be valid and legally binding, it must be communicated to the offeror. Mere intention or mental determination to accept on the part of the offeree is no acceptance.

Example: 'A' proposes to sell his house to 'B' at a certain price. 'B' accepts the proposal by letter through a post. The communication of acceptance is complete as against 'A', when the letter is posted by 'B'. And as against 'B', the communication of acceptance is complete when the letter is received by 'A'.

A communication of acceptance to be valid, must be either by the offeree himself or by his authorised agent. A communication of acceptance by any other person will not be valid.

The relevant leading case on this point is -

***Powell v. Lee* (1908) 99 LT 284:--** In this case, the plaintiff appeared before the Managing Committee for the post of Headmaster of a school. The committee passed a resolution, appointing him as the Headmaster, but no communication to that effect was sent to him. One of the members of the committee, in his individual capacity informed him that he was selected. The committee in

its subsequent meeting cancelled the resolution/selection. In an action by the plaintiff against the Managing Committee, it was held that the suit is not maintainable on the ground that an acceptance to be valid, it must be communicated by the offeree alone, not by any other person/party.

COMMUNICATION AND REVOCATION OF ACCEPTANCE

Communication of Acceptance:— An acceptance to be valid and legally binding, it must be communicated to the offeror. Mere mental determination or external indication is no communication. It (communication of acceptance) may be express (oral and written) or implied (from the conduct of the offeree). It should be made from the person, who has an authority to accept and not from any other.

When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. It means that the offeree must signify his assent, or communicate the acceptance. The communication of acceptance is deemed to be made by any act or omission of the party accepting, by which he intends to communicate such acceptance, or which has the effect of communicating it. When the parties are face to face, communication could be oral. When they are at a distant place communication could be made by post, by telegram, by a message on phone, through a messenger, or in any other reasonable manner. Sometimes the conduct of a person might indicate his assent.

The relevant leading case on this point is:

Powel v. Lee: **1908 24 TLR 606:--** The plaintiff appeared before the Managing Committee for the post of Headmaster of a school. The committee passed a resolution, appointing him as the Headmaster, but no communication to that effect was sent to him. One of the members of the committee, in his individual capacity informed him that he was selected. The committee in its subsequent meeting cancelled the resolution/selection. In an

action by the plaintiff against the Managing Committee, it was held that the suit is not maintainable on the ground that an acceptance to be valid, it must be communicated by the offeree alone, not by any other person/party.

Mode of communication :

Acceptance when complete:-- According to Sec. 4 of the Indian Contract Act, 1872, communication of acceptance is complete as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor as against the acceptor, it is complete, when it comes to the knowledge of the proposer.

It is further clear from illustration (b) to Section 4 which is as follows : B accepts 'A's proposal by a letter sent by the post. The communication of the acceptance is complete, as against A, when the letter is posted and as against B, when the letter is received by A.

Acceptance by post:-- In case of acceptance by post a difficult question arises as to when the acceptance is complete and the contract is concluded. This led to a lot of litigation in the last century. The first important case in this connection is ***Adams v. Lindsell,* (1818) 106 E.R. 250.**

In this case, the defendants made an offer to sell wool to the plaintiff by letter dated September 2, 1817. This letter reached on September 5, 1817. The plaintiff posted his letter of acceptance on the same day, i.e. on the 5th September 1817, which the defendants received on September, 9, 1817. But the defendants had already sold the wool to some other party having waited up to 8th September. In an action brought against them by the plaintiff for the breach of contract, the Court held the defendants liable. According to the Court, the contract was complete when the plaintiffs posted the letter of acceptance. The Court observed:

".....If the defendants were not bound by their offer when accepted by the plaintiff till the answer was received, then the

plaintiff ought not to be bound till after they had received the notification that the defendants had received the answer and assented to it. And so it might go on ad infinitum."

The rule in Adam's case was approved by the House of Lords in ***Dunlop v. Vincent Higgins*** **(1848) 1 H.L.C. 381.** Another important case on the point is ***Households Fire and Accident Insurance Co. v. Grant,*** **(1879) L.R. 4, Ex. D. 26 (C.A.).**

Acceptance by Telephone or Telex:-- When the parties are in each other's presence or though separated in space yet are in direct communication as by telephone, the contract is not complete until the offerer comes to know of the fact of acceptance. ***Entores Ltd. v. Mills Far East Corporation*** **(1955) 2 Q.B. 327,** the Court of Appeal held :

".....Where a contract is made by instantaneous communication, for example by telephone the contract is complete only when the acceptance is received by offerer, since generally an acceptance must be notified to the offerer to make a binding contract."

In this case, the plaintiff made an offer from London by telex to the agents in Holland of the defendant of the purchase of certain goods, and the offer was accepted by a communication received on the plaintiff's telex machine in London. On the allegation that breach of contract was committed by the defendant Corporation, the plaintiff sought leave to serve notice of a writ on the defendant Corporation claiming damages for the breach of contract. The defendant Corporation contended that the contract was made in Holland.

Denning, L.J., expressed his conclusion in the following words:

".....that the rule about instantaneous communications between the parties is different from the rule about the post. The contract is only complete when the acceptance is received by the offerer, and the contract is made at the place where the acceptance is received."

This rule has been affirmed by the Supreme Court in ***Bhagwandas v. M/s. Girdhari Lal & Co.*** **AIR 1966 SC 543.**

Revocation of Acceptance:-- Acceptance can be revoked by the offeree at any time before it reaches the offeror. The offeree may adopt (resort to) speedier mode (Eg. acceptance by letter and revocation by telegram/telephone).

Position in India:-- It has already been noted above that when the contract is created through post, according to Sec. 4, by the posting of the letter of acceptance:

(i) the proposer becomes bound when the letter of acceptance is posted to him,

(ii) but the acceptor becomes bound when the letter of acceptance reaches the proposer.

Since the acceptor does not become bound immediately on posting his letter of acceptance, he is free to revoke the acceptance by adopting speedier mode of communication, whereby his communication of revocation of acceptance may reach earlier than his letter of acceptance. Sec. 5 expressly permits the revocation of acceptance through the following provision :

"An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards."

Illustration:-- A proposes by a letter sent by post, to sell his house to B, B accepts the proposal by a letter sent by post. B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

Position in England:-- According to English law, once the letter of acceptance is posted, it binds both the parties and there appears to be no scope of revocation of acceptance by sending a telegram or through a phone call. Although there is no English case on the point but the authorities on the subject are of the view that the posting of the letter of acceptance creates a contract binding on both the parties, and the letter of acceptance once posted cannot be revoked. The reason for this position is that if

the acceptor is allowed to withdraw his acceptance, he will have the best of both worlds, having a choice to make the offeror liable by relying on his acceptance, and also having an option to withdraw his acceptance by telegram or telephone call.

PART-C: CASE COMMENT

If a case is asked in Part-C, as case itself or in form of a problem, the student has to write about that case in detail as follows:

***Carlill v. Carbolic Smoke Ball Co.* 1893 1 QB 256**

Facts of the Case:-- The defendant in the instant case was the manufacturer of a medicine, called 'smoke ball' for curing the disease 'influenza'. The defendant, in their advertisement assured that the medicine would cure influenza completely, if it is administered (used) for 15 days as per the printed directions. The defendant also announced a reward of 100 Pounds to any one, who suffers from influenza even after (inspite of) using the medicine for 15 days as directed. It was further stated that an amount of 1000 Pounds was deposited in a Bank to show their sincerity in this regard. Mrs. Carlill, in response to the advertisement, purchased the medicine (smoke ball) and used it as per the printed directions. But, the influenza attacked her again. She filed a suit against the defendant for the reward.

Issues/Questions Involved:-- The issues/questions involved in the instant case are:

1. Whether the advertisement given by the defendant is an offer? Or an invitation to offer?
2. If it is an offer, whether it is a specific offer or a General Offer, acceptable to any one.

With regard to the first question, the advertisement given by the defendant is not an invitation to offer as it does not give rise to an offer from the others (as in the case of tenders, display of Articles in a show case) and hence it is an offer.

With regard to the second question, if an offer is made to an individual or group of individuals, it is a 'specific offer', he/

they alone can accept. In the instant case, the offer is made to the public as a whole in form of an advertisement and is acceptable to any one and hence, it is called 'General Offer'.

Decision/Judgment:-- The House of Lords, held that the defendant was liable on the ground that the defendant's advertisement containing a reward was a general offer, open to all and it can be accepted by any one. Purchase and use of the medicine amounts to acceptance and hence, the acceptor, i.e. the plaintiff in this case is entitled to the reward.

Problem:-- Basing on the facts of the above case, problem can be framed as follows:

Soundharya Cosmetics Pvt. Ltd., in an Advertisement in the News Paper stated that they released a face cream called 'Clincil', which would cure pimples, if it is used for two weeks as per printed directions. The defendant company also announced a reward of Rs. 1,000/- to any one, who suffers from the pimples even after using the face cream for 2 weeks as directed. It was further stated that an amount of Rs. 50,000 was deposited in a Bank for the purpose. On seeing the Advertisement Miss. Lavanya, an intermediate student purchased and used the face cream for two weeks as per the printed directions. But her pimples were not cured. She sued the defendant company for the reward. Decide.

Ans: This problem relates to 'General offer'.

The relevant Leading Case, on which the problem is framed is:

Carlill v. Carbolic Smoke Ball Co. **1893, 1 Q.B. 256**
Write about General Offer and the above case in detail (and then write as follows).

In view of the above facts and circumstances, the defendant cosmetics company is liable to pay the reward to the plaintiff as laid down by the House of Lords in the case of ***Carlill v. Carbolic Smoke Ball Co.***

Questions and How to Answer

Q. What are the essential requisites of a valid offer?
(A.U., September, Part-A, Q.1).

OR

Q. What is an offer? State the rules of a valid offer?
(A.U., July 2000, Part-B, Q.1).

Ans. Write the meaning, definition and essentials of an offer in brief if asked as short question and in detail if asked as an essay question in Part-B.

(Q). Can an offer be revoked? If so how?
(A.U., Sept. Part-A, Q.2).

Ans. Yes. An offer can be revoked. Write now, about revocation of offer.

(Q) An offer need not be made to an ascertained person. Explain this statement with reference to leading case law.

Ans. An offer can be made to an ascertained person (specific person or persons) or need not be made to an ascertained person.

When the offer is not made to an ascertained person, it refers to any person such offer is called **'General Offer'.** The relevant leading case is:

Carlill v. Carbolic Smoke Ball Co.

The question/statement can be explained with reference to the meaning and definition of offer; and General and Specific Offer as follows:

Write now, meaning, definition of offer; and General and Specific Offer from the elements of offer in detail. (In case, the question is asked as short question/short notes, write briefly about General Offer and Specific Offer).

(Q) Distinguish between General Offer and Specific Offer?
(A.U. Model Q.P., Part-A, Q.3).

(Q) Specific Offer (S.V.U., Nov. 97, Part-A, Q.2).

(Q) Write a note on 'General Offer'. How the acceptance of general offer is made? (N.U. April 99, Part-A, Q.3).

(Q) Explain General Offer (A.U., July 2000, Part-A, Q.3).

(Q) What is meant by acceptance? (A.U., July 2000, Part-A, Q.7).

(Q) Write about the communication of acceptance and revocation of acceptance? (A.U., Model Q.P., Part-B, Q.2).

Ans. Write meaning and definition of acceptance and then communication and revocation of acceptance.

(Q) "Acceptance is to an offer what a lighted match is to train of gunpowder" - Elaborate.

Ans. This question "Acceptance is to an offer what a lighted match is to a train of gunpowder" is given by Anson, in his 'Law of Contracts', 23rd Edn. Page-55.

This question signifies the 'effect of the communication of acceptance'. When once, the communication of acceptance is complete, it (acceptance) cannot be revoked/stopped like how the gunpowder after lighting a match cannot be stopped from the explosion.

According to Sec. 5 of the Indian Contract Act, 1872

"a proposal (offer) may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards".

"An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor".

Write now about the meaning and definition of acceptance and communication and revocation of acceptance.

LECTURE-IV

CONSIDERATION

This Lecture covers:

1. Consideration : Meaning and Definition.
2. Essential Elements.
3. Past Consideration.
4. A contract without consideration is valid (Sec. 25).
5. Stranger to Contract or Privity of Contract.

1. CONSIDERATION : MEANING AND DEFINITION

(A Contract without consideration is VOID).

Meaning:-- Consideration is one of the most essential elements for formation of contract. It means "something in return". It is the 'price' paid for the contract. It must be lawful. It may be in cash or in kind or otherwise. It refers to both the parties in a contract.

Example:-- Sale of house. In a contract for the sale of a house is consideration for one party, while the price is consideration for the other party.

Therefore, it has been contained/enshrined in the latin maxim that *'Ex nudo pacto non oritur actio'*, which means *'out of a nude fact, no cause of action arises'*. In other words *'a contract without consideration is void'*.

Definition:-- The term 'consideration' may be defined as follows -

Lush, J in the case of ***Curie v. Misa*** **(1875) LR 10 EX 153 at p. 162,** has defined consideration as " a valuable consideration in the eye of law may consist either in some right, interest, profit, or benefit accruing, to the one party, or some for bearance, and detriment, loss or responsibility given, suffered or undertaken by the other."

In *Chidambara Iyer v. Renga Iyer*, AIR 1966 SC 193 at p. 162, the Supreme Court of India quoted with approval the above definition and pointed out that the above definition is almost similar to that contained in Section (2)(d) of the Indian Contract Act. Thus consideration means a reasonable equivalent or other valuable benefit passed on by the promisor to the promisee or by the transferor to the transferee.

Section 2(d) of the Contract Act defines consideration in the following words:

"When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does, or abstain from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise." (has done or abstained from doing: refers to **past**; does or abstains from doing: refers to **present**; promises to do or to abstain from doing: refers to **future.**) Thus, in India, consideration may be past or present or future. But in **England**, consideration may be present or future but not past i.e. **past consideration is no consideration.**

2. ESSENTIAL ELEMENTS

Consideration to be valid and enforceable, the following conditions are to be satisfied:

i) It must move at the desire of promisor.

ii) It may move from promisee or any other person (privity of consideration).

iii) It must be real, not illusory.

iv) It need not be adequate.

v) It may be past, present or future.

vi) It must not be illegal, immoral or opposed to public policy.

i) It must move at the desire of the promisor:-- It is essential that consideration must move at the desire of the promisor, but not at the instance of a third party. An Act done at the desire

of a third person will not constitute a good consideration within the meaning of Section 2 (d) of the Act.

Example: 'A' renders some service to 'B' without his request. Later, 'A' cannot demand/ask consideration for his services. The relevant leading case on this point is -

***Durga Prasad v. Baldeo,* ILR (1880) 3 ALL 221.**

The plaintiff constructed some shops in a market under the orders of the Collector. The defendant occupied a shop and promised to pay some commission to the plaintiff and did not pay. In an action against the defendant, it was held not maintainable.

Oldfield, J., observed :

"Now the deed is silent as to the character of the consideration for the promise and the only consideration for the making of the promise is the expense incurred, by the plaintiff in establishing the Ganj: but it is clear that anything done in that way was 'not at the desire' of the defendants so as to constitute a consideration....."

Thus to constitute a good consideration, act or abstinence must be at the desire of the promisor.

ii) Consideration must move from promisee or any other person:-- In English Law, consideration must move from promisee only. But in Indian Law, it may move from promisee or any other person. This means that a party who wishes to enforce a contract must be able to show that he himself has furnished consideration for the promise of the other party. In other words, '*stranger to the consideration or privity of consideration is valid in India*'. Relevant case on this point is:

***Chinnayya v. Ramayya,* ILR (1881) 4 Mad 137.**

In this case, A, an old lady, granted an estate to her daughter (the defendant) with a direction that the daughter should pay an annuity of Rs. 653, to A's brothers (the plaintiffs). On the same day, the defendant made a promise with the plaintiffs that she

would pay the annuity as directed by A. The defendant failed to pay the stipulated sum. In an action against her by the plaintiffs she contended that since the plaintiffs themselves had furnished no consideration, they had no right of action.

The Madras High Court held that in this agreement (between the defendant and the plaintiffs), the consideration has been furnished by the defendant's mother and that is enough consideration to enforce the promise between the plaintiffs and the defendant.

In this case, Innes, J., observed :

"It seems to me that the case is on the same footing as *Dutton v. Poole*, and that a consideration indirectly moved from plaintiffs for the promise contained in A (i.e. document), the agreement can be enforced by the plaintiffs and the courts below were right in giving them a decree for the annual sum due and not paid. Kindersely, J. who also arrived at the same conclusion, however remarked: "It appears to be that the deed of gift in favour of the defendant and the contemporaneous between the plaintiffs and the defendant may be regarded as one transaction, and there was sufficient consideration for the defendant's promise within the meaning of the Contract Act."

It may be submitted that even if agreement had not been contemporaneous between the defendant and the plaintiffs, the decision should have been the same and a promise by the defendant would have been enforceable because Section 2(d) clearly provides that consideration may be given by the promisee or any other person.

Privity of Contract:-- The doctrine of privity of contract means that only those persons who are parties to the contract can enforce the same. A stranger to the contract cannot enforce a contract even though the contract may have been entered into for his benefit. If in a contract between A and B some benefit has been conferred upon X, X cannot file a suit to enforce the contract because A and B are the only parties to the contract whereas X is stranger to the contract.

The rule that a stranger to contract cannot sue has to be distinguished from the rule discussed above that in India a person who is stranger to consideration can sue. It has been noted above that a person may not have himself given any consideration but he can enforce the contract if he is a party to the contract, because according to the Indian law, consideration may be given either by the promisee or a third party. That does not affect the rule of privity of contract.

Subscription or Donation for Charitable purpose:

For every promise, Consideration is necessary. Now, the question is whether subscription or donation is enforceable? Following case law answers this question:

***Abdul Aziz v. Masum Ali,* AIR 1914 All 22:--** In this case, the defendant promised to donate Rs. 500/- for repairs of a Mosque and did not pay. But the process of repair was not started. In an action by plaintiff, it was held that, the promise by the defendant was not enforceable.

Similar promise of Rs. 100/- for construction of a town hall was held enforceable in the case of:

***Kedarnath v. Gorie Mohammed,* I.L.R. (1887) 14 Cal. 64:** On the ground that the construction work had already been started relying upon the defendant's promise.

iii) It must be real not illusory:-- Consideration must be real and possible. It must not be illusory or unsubstantial.

Example:-- A promise to put life in dead body for Rs. 1,00,000/- is illusory.

The relevant case on this point is -

***White v. Bluett* (1853) 23 L.J. Ex. 36:--** In this case a son used to complain to his father that his brothers had been given more property than him. The father promised that he would release the son from a debt if the latter stopped complaining. After the father's death an action was brought by the executors to recover

the debt. The son contended that the father had made a contract to release him from the debt in consideration for his promise not to bore his father. It was held that the promise by the son not to bore his father with complaints in future did not constitute good consideration for the father's promise to release him, and, therefore, the son continued to be liable for the debt.

iv) It need not be adequate:-- Consideration need not be adequate. If it has some value in the eyes of law, it is enough and the contract is valid. A contract which is supported by consideration is valid irrespective of the fact that the consideration is inadequate. According to Explanation 2 to Section 25 :

"An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given."

Example: 'A' sells his cycle worth of Rs. 1,000/- to 'B' for Rs. 100/- only. It is valid though the consideration is inadequate (not sufficient).

v) It may be past, present, or future:-- The words enshrined in the definition under Sec.2(d) of the Act (Indian Contract Act, 1872) clearly state that, consideration may be past, present or future. Indian Contract Act recognises three kinds of consideration, viz. Past, Executed and Executory.

When, in return for the promise, the promisee or any other person:

(a) has done or abstained from doing, the consideration is past.

(b) does or abstains from doing, the consideration is Executed or present.

(c) promises to do or to abstain from doing, the consideration is Executory or Future.

Whether the consideration is Past, Executed or Executory, it is essential that it must have been given "at the desire of the promisor".

But, in English Law consideration may be present or future, but not past. (Past consideration is no consideration in English Law).

vi) It must not be illegal, immoral or opposed to public policy:-- Consideration may be lawful. It must not be illegal, immoral or opposed to public policy.

3. PAST CONSIDERATION

(Past Consideration is no consideration)

Past Consideration:-- Where the promisor had received the consideration before the date of promise, such consideration is called 'Past Consideration'.

Example:-- Promise for past services rendered. 'A's scooter on his way to office is stopped due to some defect in the engine. 'A' requested 'B', who was passing on that way to attend the repair and 'B' repaired the scooter. Later, 'A' promised 'B' to pay Rs. 100/- in consideration of his past service.

According to English Law past consideration is no consideration. A promise in lieu of a past act is deemed to be only expression of gratitude for the benefit already received, rather than any consideration motivating the other side to make the promise. A promise after the consideration has already been given and independent of it, is not enforceable for want of any consideration in exchange for the promise.

In ***Re Mc Ardle*** **(1951) All E.R. 905 (1951) Ch. 669** case, in accordance with the will of a father, his five children were entitled to an equal share in a house after their mother's death. During the mother's lifetime one of the testator's son and his wife lived in that house. At that time the wife made some improvements in the house, incurring an expense of 488 pounds.

Subsequently, all the five children, who were to inherit the house, signed a document in her favour stating that "in consideration of your carrying out certain alterations and improvements to the property, we hereby agree that the executors shall repay to you from the said estate, the sum of 488 pounds in settlement of the amount spent on such improvements." On the mother's death, the promise claimed 488 pounds from the executors on the strength of the above promise, but except her husband all the other promisors refused to pay. It was held by the Court of Appeal that since the expenditure had been incurred before the document was signed, the consideration was past and therefore the promise could not be enforced.

In England, "Past Consideration is no consideration i.e. not valid". In other words, only present and future considerations are valid.

Executed or Present Consideration:-- When one of the parties to the contract has performed his part of the promise, which constitutes the consideration for the promise by the other side, it is known as executed consideration. Performance of the promise by the other side is the only thing now to be done. For example, A makes an offer of reward of Rs. 100 to anyone who finds his lost dog and brings the same to him. B finds the lost dog and delivers the same to A. When B does so, that amounts to both the acceptance of the offer, which results in a binding contract under which A is bound to pay Rs. 100 to B, and also simultaneously giving consideration for the contract. The consideration in this case is "executed".

Executory or Future Consideration:-- When one person makes a promise in exchange for the promise by the other side, the performance of the obligation by each side to be made subsequent to the making of the contract, the consideration is known as executory. For example, A agrees to supply certain goods to B and B agrees to pay for them on a future date, this is a case of executory consideration.

But in India, past, present and future considerations are valid. This is clearly stated in the definition of consideration as follows:

Section 2(d) of the Indian Contract Act, 1872, defines consideration as "When at the desire of the promisor, the promisee or any other person has done or abstained from doing, does or abstains from doing, or promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promise" (has done or abstained from doing: refers to Past; does or abstains from doing: refers to Present; promises to do or to abstain from doing: refers to Future).

Thus, in India, consideration may be past or present or future. But in England, consideration may be present or future but not past i.e. past consideration is no consideration.

Relevant Case Law:

1. *Roscorla v. Thomas,* (1842) 3 Q.B. 234:-- In this English case, the defendant sold his horse to the plaintiff. After sale, the defendant said (warranted) that the horse was sound and free from vice. But, the horse was found to be a vicious one. In an action by the plaintiff against the defendant, it was held not actionable on the ground that past consideration is no consideration in England.

2. *Sivasaran v. Kesava Prasad:* In this Indian case, the plaintiff sued the defendant, a landlord for the past services rendered as a manager (to the landlord). It was held actionable on the ground that past consideration is valid in India.

4. A CONTRACT WITHOUT CONSIDERATION IS VALID (Sec. 25)

(The general rule "A contract without consideration is void, Section 25)

It is said that a contract without consideration is void (invalid). It means, for the validity or enforceability of a contract, consideration is essential. However, Section 25 of the Indian Contract Act provides for certain exceptions to this general rule.

Section 25:— According to the Section 25, a contract is valid, even without consideration in the following cases.

1. Love and Affection.
2. Compensation for voluntary services; and
3. Time barred debt.

1. Love and Affection:— According to Section 25(1), an agreement between two relations out of love and affection is valid even without consideration.

Section 25(1) provides that an agreement without consideration is void :

unless "it is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other, the agreement will not be void for want of consideration."

When the promise is made in favour of a near relation on account of natural love and affection, the same is valid even though there was no consideration for such a promise.

Example:— 'A', a parent promised his son 'B' to pay Rs. 1,000/- in writing. The promise is enforceable.

Conditions:— The contract to be valid under Section 25(1) the following conditions are to be satisfied:

i) The parties must stand in some relationship.
ii) The agreement is made out of natural love and affection.
iii) The promise must be in writing.
iv) It must be registered under the law in force.

The parties should be nearly related to one another in such an agreement. What is near relationship has neither been defined in the Act, nor in any judicial pronouncement. But from the various decided cases it appears that it will cover blood relations or those related through marriage, but would not include those relations which are not "near" but only remotely entitled to inherit.

Relevant Case Law:

Venkata Swamy v. Ranga Swamy:— The elder brother (defendant) promised the plaintiff in writing to repay the loan of his (defendant's) younger brother. It was held enforceable.

Sometimes it may happen that the parties stand in a near relation to each other yet the agreement may not be out of natural love and affection or there may be no love and affection between them. In such a case this exception cannot be invoked.

For example, In *Rajlukhy Debee v. Bhootnath Mookerjee*, (1900) 4 Cal. SN 488, the suit was filed by the wife against her husband to recover the arrears of the allowance which her husband agreed to pay under the registered agreement. The agreement referred to the mutual quarrels and proceeded as follows : "It having become inconvenient for you in many respects to live as aforesaid (and) finding it difficult to live in my family you have claimed proper maintenance and suitable habitation from me, I therefore make the following provision for your maintenance (and) habitation by this ekranama." Thus instead of expressing love and affection between the parties, the agreement rather expressed the absence of the same. The court, therefore held, "there was no consideration for this agreement moving from the wife, it was voluntary arrangement on the part of the husband, and the present suit cannot therefore be maintained."

2. Compensation for voluntary services:-- (Section 25(2) : According to Section 25(2) an agreement without consideration is void :

unless "it is a promise to compensate wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do" will not be void for want of consideration.

A promise to pay for past services is legally binding. When something has been done "at the desire of the promisor", that constitutes a good consideration in respect of a subsequent promise

to compensate for what has already been done. The second exception of Sec. 25 covers cases where a person without a knowledge of the promisor, or otherwise than at his request does the latter some service, and the promisor undertakes to recompensate him for it. The promise to compensate, though without consideration, is binding because of this exception. The exception also covers a situation where the promise is for doing something voluntarily "which the promisor was legally compellable to do."

Example:-- 'A' promised to pay Rs. 100/- to the person who had handed over the missing bag is enforceable.

3. Promise to pay time barred debt:-- A debt barred by limitation is declared bad. If the debtor or his authorised agent makes a promise to repay it, it is a contract without consideration. It is valid and enforceable. (If a suit for repayment of debt is filed beyond three years, it is not actionable (Sec. 3, Limitation Act, 1963).

Section 25(3) provides that agreement without consideration is void:

unless "it is a promise made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt which the creditor might have enforced payment but for the law for the limitation of suits."

For example, A owes B Rs. 1000 but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This will be a valid contract and shall not be void for want of consideration.

Section 25(3) requires the following essentials to be satisfied in such a case:

1. The promise must be to pay wholly or in part a time-barred debt, i.e., a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

2. The promise must be in writing and signed by the person to be charged therewith, or his duly authorised agent.

Distinction between an acknowledgement under Section 18 of the Limitation Act, 1963 and a promise under Section 25(3).

The main distinction between the two is that while an acknowledgement must be made before the expiry of the period of limitation, a promise under Section 25(3) may be validly made even after the expiry of the period of limitation provided that the other conditions mentioned in Section 25(3) are fulfilled.

Relevant Case Law:

***Govindan Nair v. Achutan Nair,* AIR 1940 Mad. 678:-** A promise made by a person on behalf of the debtor to pay time barred debt was held valid and actionable.

Besides the above three exceptions contained in Section 25 of the Contract Act, Section 185 recognises one more exception for consideration in respect of the creation of agency. It provides, "No consideration is necessary to create an agency."

5. STRANGER TO CONTRACT OR PRIVITY OF CONTRACT

(A Stranger to contract cannot sue but a Stranger to consideration can sue).

The general rule is that, only parties to a contract alone can sue and be sued on that contract. Any person other than the parties to the contract is called as "Stranger to the Contract". A contract neither confers any rights nor imposes any duties/ obligations on such person. Hence, a stranger to a contract cannot sue and be sued.

This rule is known as the **'Doctrine of Privity of Contract'**. It means "relationship subsists between the parties to the suit".

Example: 'A' promises to pay Rs. 1,000/- to 'B' if he delivers goods to 'C'. In this example, 'C' is a stranger to the

contract. If 'B' fails to deliver goods to 'C', 'C' being a stranger to the contract, cannot sue 'B'.

The rule that a stranger to contract cannot sue has to be distinguished from the rule discussed above that in India a person who is stranger to consideration can sue. It has been noted above that a person may not have himself given any consideration but he can enforce the contract if he is a party to the contract, because according to the Indian law, consideration may be given either by the promisee or a third party. That does not affect the rule of privity to contract.

As pointed out by Anson (in his Law of Contract, Seventh Edn. p.408), "....it is a general rule of English law that a contract cannot confer any rights on one who is not a party to the contract, even though the very object of the contract may have been to benefit him. As promisee, he is unable to sue because there is no privity of contract between him and the promisor.

The inability of one who is not a party to the contract to acquire rights under it follows from the view which our law has adopted to the operation of contract generally; it has no particular connection with the doctrine of consideration."

Consequences of the Privity of Contract:

1. A person who is not a party, cannot sue though the contract is created/entered into for his benefit.
2. The doctrine of privity of contract does not confer any rights and obligations on the person who is not a party to the contract.

Application of the doctrine in English Law:-- According to the English Law, a stranger to a contract cannot sue. Relevant case on this point is:

***Tweddle v. Atkinson* (1861) 1 B&S 393:--** It was laid down in this case that only parties to the contract can sue each other. In that case the plaintiff, A married a girl, B. After this

marriage there was contract in writing between A's father and B's father that each would pay a certain sum of money to A and that A will have the power to sue for such sums. After the death of the two fathers, A brought an action against the executors of B's father to recover the promised amount. It was held that A could not sue for the same.

In the above stated case the plaintiff was both a stranger to contract as well as stranger to consideration and he could not enforce the claim.

The rule of privity of contract was reaffirmed by the House of Lords in, ***Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge and Company Ltd.*, (1915) A.C. 847, at 853,** *per Lord Haldane.*

The plaintiff, Dunlop Pneumatic Company Limited instructed its agents, Due and Company, not to sell the tyres and tubes below the listed price. But, Due and Company, contrary to the above instructions, entered into an agreement with the defendant, Selfridge and Company. In an action by the plaintiff against the defendant, it was held that the suit was not maintainable on the ground that the Selfridge Company, being a stranger to the contract cannot sue.

Application of the Doctrine in Indian Law:-- The position is the same in Indian Law also. Relevant Indian case on this point is:

***Jamuna Das v. Ram Avtar* (1911) 91 A 7:--** In this case, a purchaser of property contracted with the seller to pay off the mortgage debt. In an action brought by the mortgagee against the purchaser to recover the mortgage debt, it was held by the privy council that he was not entitled to force the contract so as to compel the purchaser to pay off the debt because he was not a party to the contract.

The above rule was applied by Rankin, C.J. in *Krishna Lal v. Promila Bala Devi*, AIR 1928 Cal. 518.

In *Iswaranpillai v. Sonnivaveru* (ILR (1913) 38 Mad. 733):-'A' mortgaged his property to 'B'. 'B' was to pay this amount to 'C' to clear 'A's debt. But 'B' did not pay to 'C'. In an action by 'C' against 'B', it was held that the suit is not actionable.

Exceptions:-- Following are the exceptions to the doctrine in Indian Law. In other words, **"a stranger to contract can sue"** in the following cases:

1. Beneficiary of a trust;
2. Marriage settlement;
3. Acknowledgement or Estoppel or part-payment;
4. Assignment of a contract;
5. Contract through an Agent.

1. Beneficiary of a trust:-- A well-recognised exception to the doctrine of privity of contract is that of a trust or charge created in some property in favour of third person. A trust is created for the benefit of beneficiary. (In a contract of trust, trust owner (settler) and trustee are parties to the contract and beneficiary is a stranger to the contract). A beneficiary can enforce the provisions of the trust, even though he is a stranger to the contract.

2. Marriage settlement:-- A stranger to contract can sue in respect of marriage settlement. Relevant case on this point is:

***Rose Fernandez v. Joseph Gonsalves*, AIR 1925 Bom. 97** — The defendant in the instant case entered into an agreement with the plaintiff's (girl's) father to marry the plaintiff. But he did not marry. Plaintiff's suit was held actionable though she is a stranger to the contract. (In this case, the boy entered into a contract with girl's father to marry the girl. Later, the boy did not marry the girl. The boy and girl's father are parties to the contract and the girl is a stranger to the contract).

3. Acknowledgement or Estoppel or Part-payment:-- If the promisor by his conduct or acknowledgement or part payment or by estoppel creates a privity of contract between himself and the stranger, the stranger can sue. The term 'acknowledgement' means acceptance of a receipt or admitting a liability. The term 'estoppel' literally means, when a person by declaration i.e. by an act or omission induces/makes another to believe a thing, cannot deny its truth subsequently. Part-payment means payment of an amount, which does not discharge the liability in full.

4. Assignment of a contract:-- If the benefits under the contract are assigned to the third party, the assignee can sue. 'Assignment' means transfer. An existing contract can be replaced with a new contract by changing either of the parties, terms and conditions remaining, the same. (See for details 'Novation' from Lecture VII. Discharge of Contract).

5. Contract through an Agent:-- When a person appoints another to act on his behalf with a third party, it is called 'Agency'. The former (i.e. who appoints) is called 'Principal' and the latter (i.e. the person appointed) is called 'Agent'. When the agent enters into a contract on behalf of the principal, the principal can enforce the contract (here principal is stranger to the contract; the agent and the other party are parties to the contract).

Special Note:-- Please note and remember: A stranger to contract cannot sue. But, a stranger to consideration can sue. However both have exceptions.

Case Comment

1. *Dunlop Pneumatic Tyre Company v. Selfridge & Co. Ltd.* (1915) A.C. 847 (*Dunlop v. Selfridge):*

Facts of the case:-- The plaintiffs in the instant case were the manufacturers of Dunlop Tyres and Tubes. They appointed Dew & Co. as their agents (wholesaler) for sale of their tyres and tubes at a listed price. Dew and Company supplied some tyres and tubes to Selfridge Co. Ltd. (defendants) and instructed

them not to sell below the listed price. But, the Selfridge Company contrary to the above instructions sold two tyres below the listed price and committed a breach of contract. The Dunlop Company, sued the Selfridge Company.

Issues/Questions:— The issues/questions involved in the instant case are:

1. Whether the plaintiff, Dunlop Company is a party to the contract or not?
2. Whether a stranger to a contract can sue?

1. With regard to the first question, contracts exist between:

(i) Dunlop Pneumatic Tyre Co. Ltd. and Due & Co. and

(ii) Due & Co. and Selfridge Co. Ltd.

But there is no contract between the Dunlop Company and Selfridge Company - and hence, the plaintiff i.e. the Dunlop Co. is not a party to the contract, but a stranger to the contract.

2. Regarding the second question, whether a stranger to a contract can sue, the answer is in the negative. Any person other than the parties to the contract is a "stranger to the contract", who cannot sue and be sued. Therefore, the Dunlop Co. in the instant case is a stranger to the contract and hence cannot sue the Selfridge Co.

Principle:— The Court (House of Lords) applied in this case, the fundamental principle of the Law of Contract in England that "only parties to the contract alone can sue and be sued and a stranger to the contract cannot sue". (However, there are certain exceptions to this rule).

The House of Lords applied the same principle in the case of:

Scruttons Ltd. v. Midlands Sillicones Ltd. **(1962) A.C. 446.**

Problem:— Southern Publications, New Delhi published a text book on Law of Contracts. They appointed Eastern Book Depot, Madras as their agents/wholesalers for sale of the said text books at a listed price. Southern Book Depot supplied the above books to the Central Book House, Hyderabad and instructed them not to sell below the listed price. But, the Central Book House, contrary to the above instructions sold some books below the listed price and committed a breach of the contract. Southern Publications sued the Central Book House, Decide.

Ans. Instant problem refers/relates to "stranger to a contract cannot sue".

The **relevant leading case** on which this problem is framed/ formulated is:

Dunlop Pneumatic Tyre Company v. Selfridge Co. Ltd., (1915) A.C. 847 (*Dunlop v. Selfridge*).

Write now about stranger to the contract and then Dunlop Co. case in detail as above.

Conclusion:— In view of the above discussion the Southern Publications and Eastern Books Depot are parties to the contract. Similarly, the Eastern Book Depot and Central Book House are not parties to the contract. Therefore, the Southern Publications, New Delhi, being a stranger to the contract cannot sue the Central Book House, Hyderabad, the defendants in the instant case.

Questions and How to Answer

(Q) Define consideration (A.U., Sept. Part-A, Q. 3 and A.U. July 2000, Part-A, Q.1).

Ans. Write meaning and definition of consideration.

(Q) What are the essentials of valid consideration (S.V.U. Nov. 99, Part-B, Q. 12).

Ans. Write meaning, definition and elements of consideration.

(Q) Consideration must proceed from the promisee. Elaborate. (N.U., April 99, Part-A, Q.4).

Ans. It is one of the elements of consideration. (Write the meaning and definition of consideration and then write element No. 2).

(Q) Adequacy of consideration is irrelevant. Explain. (A.U., Model Q.P., Part-A, Q.5).

Ans. It is one of the elements of consideration, that the consideration need not be adequate. (Write meaning, and definition of consideration and then, about the element that it need not be adequate).

(Q) A contract without consideration is void. Discuss. (A.U., Sept. 99, Part-B, Q.2) (Explain with reference to leading cases and exceptions if any).

Ans. The statement that 'a contract without consideration is void', is absolutely correct. The reason is, consideration is one of the most essential elements of a contract, without which a contract cannot be enforced.

However, there are certain exceptions to this general rule as provided under Sec. 25 of the Indian Contract Act, 1872.

The statement/question can be explained with reference to meaning, definition and elements of consideration as follows: (write now, meaning, definition and elements of consideration and the quotation with ref. to Sec. 25 I.C. Act).

(Q) A stranger to contract cannot sue on it. Discuss with reference to exceptions if any (A.U. Model Q.P., Part-B, Q.1) 'OR' A stranger to contract cannot sue, but a stranger to consideration can sue - Discuss.

Ans. Write the meaning and definition of consideration and the quotation, 'a stranger to contract cannot sue with case law and exceptions under Sec. 25 I.C. Act.

LECTURE-V

CAPACITY TO CONTRACT

This lecture deals with "capacity or competence or qualification of parties" to enter into a valid contract. This lecture speaks about the disqualification of certain classes of persons to enter into a contract viz. minor, a person of unsound mind etc. This lecture covers -

1. Capacity or competence : Meaning
2. Capacity or competence to contract (Sec. 11)
3. Incapacity or disqualification to contract.
   A) Minor
   B) Persons of unsound mind and
   C) Persons disqualified by law.

1. CAPACITY OR COMPETENCE : MEANING

Meaning:-- The expression capacity means 'competence or qualification of parties to enter into a valid contract'. According to Sec. 10 of the I.C. Act, 1872, a contract to be valid, the parties must be competent to contract. It runs as follows - All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

2. COMPETENCE TO CONTRACT OR CAPACITY TO CONTRACT (SEC. 11)

Section 11 of the Indian Contract Act, 1872 says that every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

This section deals with personal capacity in three distinct branches : (a) disqualification by infancy; (b) disqualification by insanity; (c) other special disqualification prescribed by law.

According to Section 11 of the Indian Contract Act, 1872, any person is competent to contract provided:

i) He/she is a major (i.e. he/she should not be a minor);

ii) He/she is of sound mind (must not be of unsound mind); and

iii) He/she must not have been disqualified to contract by law in force (i.e. legally qualified to contract).

3. INCAPACITY OR DISQUALIFICATION TO CONTRACT

As stated above, minors, persons of unsound mind and persons, disqualified by law are not competent to contract. This lecture deals with the contractual capacity with regard to:

A) Minor.

B) Persons of Unsound mind; and

C) Persons disqualified by law.

A) MINOR

Meaning & Definition:-- According to Section 3 of the Indian Majority Act, 1875, a minor is a person, who has not completed the age of 18 years. The minority extends to 21 years, if a guardian of a minor's person or property is appointed. (Under the Guardians and Wards Act, 1890).

Minor's Agreement:-- Section 10 of the Contract Act lays down that the contracting parties should be competent to contract and Section 11 expressly provides that a person who has not attained the age of majority according to the law to which he is subject, is incompetent to enter into a contract. Contractual capacity of minor may be explained as follows:

1. Void *ab initio;*
2. Promisee or beneficiary but not promisor;
3. No ratification;

4. No restitution;
5. No estoppel;
6. No specific performance;
7. No vicarious liability.

1. Void *ab initio*:-- It means invalid, at the very beginning. Earlier a contract entered into with minor was voidable at his (minor's) option. But in 1903, the Privy Council made it essential that all contracting parties should be competent to contract and held that a contract entered into with minor is *void ab initio.* This view was laid down by the Privy Council in the leading case of:

Mohiribibi v. Dharmadas Ghose,* (30 Cal. 539 P.C.):--** In this case, a minor mortgaged his house for Rs. 20,000/- to money lender, and received an advance of Rs. 8,000/-. Later, he avoided the contract and did not return the advance. In an action by the minor to set aside the mortgage deed, it was held that the contract is not enforceable on the ground that, **an agreement with minor is *void ab initio. This view laid down by the Privy Council in the above case, is popularly known as "**The Rule in *Mohiribibi v. Dharmadas Ghose*"**.

However, if the minor has carried out his obligations, he can bring a suit against the other party for the enforcement of the other party's obligations. Example : A minor entered into a contract for sale of goods and delivered the goods to the purchaser. It was held that he was entitled to bring a suit for the recovery of the price of the goods sold (*Abdul Ghaffar v. Piare Lal,* AIR 1994 Lahore 480). But an agreement to levy, where there has been no transfer of property, is not binding on the minor, so it cannot be enforced by the vendor.

The Courts have consistently held that any mortgage deed, sale deed or promissory note in favour of a minor is valid. The Courts spread special cloak of protection round the minor. Therefore, any transaction in favour of a minor is valid. It has been held

by a Full Bench of the Madras High Court (***Raghava Chariar v. Srinivasa,*** **AIR 1917 M. 630 F.B.**) that a mortgage executed in favour of minor who has advanced the mortgage money is enforceable by him or by other person on his behalf.

Thus contracts entered into by a minor are void in respect of the following cases -

i) Contracts entered into by minor for the repayment of money lent or to be lent;

ii) Contracts for goods supplied or to be supplied; and

iii) Contracts for all accounts settled with infants.

Distinction between English Law and Indian Law:-- As noted above, in England some of minor's contracts are merely voidable whereas others are absolutely void. In India, there was controversy in this connection upto 1903. In that year in ***Mohari Bibee v. Dharmodas Ghose***, the Privy Council finally ended this controversy by holding that by virtue of Sections 10 and 11 of the Indian Contract Act minor's contracts are void *ab initio*.

2. Promisee or Beneficiary but not promisor:-- A minor can be a promisee or beneficiary but not a promisor. In other words, a minor can enjoy the benefits and privileges under the contract. But he cannot be held liable under the contract.

Property, Promissory notes, Bonds, etc. in favour of minors:-- It is open to the donor to transfer by gift title and ownership in the property in favour of minor. A minor donee who can be said to be in law incompetent to consent under Section 11 is however competent to accept a non-onerous gift. Acceptance of an onerous gift, however, cannot bind the minors. The acceptance of the gift can be presumed to have been made by him or on his behalf without any overt and signifying acceptance by the minor. This presumption is based on the human nature. A man may be fairly presumed to assert to that to which he in all probability would assent if the opportunity of doing so were given

to him, the Court observed this in case of ***Raghava Chariar v. Srinivasa,*** **AIR 1917 M. 630 F.B.** When a promissory note or a bond or other instrument is executed in favour of a minor for consideration, which is paid, the promissory note or other instrument, may be enforced by the minor.

It should, however, be clearly understood that transfers in favour of minors are valid only when the consideration for such transfers is not a promise but an act actually done, that is, the consideration is executed and they are beneficial to the minor.

Raghava Chariar v. Srinivasa, **AIR 1917 M. 630 F.B.:** It was held in this case that, a contract of mortgage was enforceable in favour of a minor.

3. No Ratification:-- Ratification means 'subsequent acceptance/approval/sanction'. A minor's agreement is void and being a nullity has no existence in the eye of law and therefore it cannot be ratified and it cannot support a fresh promise by the infant after attainment of majority. At the time of entering into the contract, if the person is a minor, the benefits of minority would continue even after attaining his majority. He need not ratify the liability (incurred during minority) after attaining his majority. Thus, a promissory note executed by a person on attaining majority in settlement of an earlier promissory note executed by him during minority in consideration of a sum of money received by him when a minor is not enforceable for want of consideration (*Suraj Narain v. Sukku Ahir*, 1928 All. 44 (FB). It would be inconsistent with the general tenor and policy of the Contract Act to hold that though the agreements were void when they were made and cannot be ratified by the promisor on attaining majority, nevertheless the same result can be achieved by the promisor taking a trifling loan from the promisee and promising to pay of that sum and the irrecoverable debts.

Therefore, where a minor on attaining majority executed a mortgage bond in favour of a creditor in consideration of advances received by him during his minority and also a fresh

advance made at the time of mortgage, it has been held that the mortgage was enforceable only to the extent of the fresh advance, because minor's contract being void is incapable of ratification by him on attaining majority.

Suraj Narian v. Sukhu Ahir, **ILR (1928) 51 All. 164:-** In this case, a minor borrowed some money by executing a bond. When he became major he executed a second bond for the earlier borrowed money as well as interest on it. The Court held that the second bond was invalid because it was without consideration.

4. No Restitution:-- A minor need not return or restitute the benefits received under void or voidable agreements.

If a minor obtains some property by fradulently misrepresenting his age, he can be ordered to restore the property or goods thus obtained. This is called the equitable doctrine. Under English Law, a minor may be compelled to restore the goods or property so long as they are traceable. Money being generally not traceable, a minor cannot be asked to restore it.

This was held in the well known English case - ***Leslie v. Sheill,*** **(1914) 3 KB 607,** wherein the limits of the restitution were explained. In this case, the defendant minor by fradulently misrepresenting himself to be a major, induced the plaintiff to lend him two sums of 200 pounds each. The plaintiff filed the suit to recover 475 pounds being amount of advances with interest. This action was resisted by the defendant on the plea of infancy. The Court dismissed the suit and pointed out that it was necessary to safeguard the weakness of the infants at large, "even though here and there a juvenile slipped through", while dismissing the suit Lord Summer observed :

"So long back as 1676, it was decided that although an infant may be liable in tort generally, he is not answerable for a tort directly connected with a contract, which as an infant he would be entitled to avoid. One cannot make an infant liable for breach of contract by changing the form of action to one *ex delicto*..."

While explaining the limits of restitution Lord Summer observed:

"the whole current of decisions down to 1913, apart from dicta which are inconclusive, went to show that, when an infant obtained an advantage by falsely stating himself to be of full age, equity required him to restore his ill-gotten gains, or to release the party deceived from obligations or acts in law induced by the fraud, but scrupulously stopped short of enforcing against him a contractual obligation, entered into while he was an infant, even by means of fraud.....Restitution stopped where repayment began."

He also pointed out that unless there is a fiduciary relationship or accountability between the parties, the minor is entitled to repudiate the transaction on attaining majority. There is, however, an exception where the minor is in possession of the property which he can return in specie. But if it is repayment, the minor is not bound to pay it for it would amount to enforcing a void contract. In the instant case, there was neither accountability nor any fiduciary relationship; the minor had spent the money received. Since money was not traceable, the minor could not be asked to restore it.

The rule in ***Leslie v. Sheill***, was approved by the Privy Council in ***Mohd. Syedol Ariffin v. Yesh Ori Gark,*** **AIR 1916 PC 242.**

Further the Allahabad Full Bench in ***Ajodhia Prasad v. Chandan Lal,*** **AIR 1937 All 610 (FB),** the rule in Leslie v. Sheill was followed.

But, the Full Bench through Sir Shadi Lal C.J. overruled the above decision in ***Leslie v. Sheill*** in ***Khan Gul v. Lakha Singh*** **(1928) 9 Lah. 701.**

In this case, the plaintiff filed the suit for possession of land sold to them by the defendant for Rs. 17500. The defendant while receiving the money had falsely represented himself to be of full age. The suit was resisted by the defendant on the ground of minority. The trial court decreed the suit for possession holding

that the defendant had made a false representation that he was of full age to the plaintiff and was, therefore, estopped from raising the plea of minority.

5. No Estoppel:-- The question is whether the principle of estoppel is applicable in case of a minor?

The principle of estoppel is enshrined in Section 115 of the Indian Evidence Act (1 of 1872) which provides as follows :

"When one person has his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true, and to act upon such belief, neither he nor his representatives shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing."

The question whether a minor, who has made a false representation as to his age is estopped from pleading his minority, was raised but not decided in the case of ***Mohari Bibi v. Dharmo Das Ghose,* (1903) 30 Cal. 539 P.C.** Their Lordships observed in that case that section 115 of the Evidence Act (Estoppel) did not apply to a case where the statement as to age is made to a person who knows the real facts and is not misled by the untrue statement. There can be no estoppel, where the truth of the matter is known to both parties, and their Lordships held in accordance with English authorities that a false representation made to a person who knows it to be false, is not such a fraud as to take away the privilege of infancy.

The question as to whether a minor can be estopped by a false representation as to his age is now settled by the case of ***Nawab Sadiq Ali Khan v. Bibi Jai Kishori,* (1928) P.C. 159** where the Privy Council has held that a minor cannot be made liable upon a contract by means of an estoppel. It is a settled law now that a minor is not estopped from pleading minority even though he may be guilty of misrepresentation as to his age. The Allahabad High Court has held that a minor who procures a loan

by falsely representing that he is of full age is not estopped from pleading his minority in a suit upon a promissory note executed by him. It has been held by a Full Bench of the Bombay High Court in the case of ***Godigoppa v. Balangowda,*** **AIR 1931 Bom. 561,** that where an infant represents fradulently or otherwise that he is of age and thereby induces another to enter into a contract with him, then, in an action founded on the contract, the infant is not estopped from setting up infancy. Section 11 of the Contract Act being a matter of substantive law must prevail over Section 115 of the Evidence Act which is merely a matter of procedure.

The doctrine of estoppel cannot be applied to an Act of Parliament. Estoppel only applies to a conduct inter partes and it is not competent to parties to a contract to estop themselves or anybody else in the face of an Act of Parliament.

Therefore, if a minor, by misrepresenting himself as a major, enters into a contract, then he cannot be estopped from pleading minority to get benefits under the contract. **Relevant** case on this point is:

Sadiq Ali Khan v. Jai Kishore **(1928 PC 152):—** Privy Council held in this case that, a minor could not be estopped from pleading minority.

6. No Specific Performance:-- A minor cannot be sued for specific performance of the contract.

A minor's agreement being void cannot be specifically enforced. But agreements in favour of a minor are perfectly valid. In other words, agreements which are beneficial to the minor are valid. The only difficulty is that a minor cannot claim specific performance of an agreement because specific performance being an equitable remedy can be granted only when there is mutuality, i.e. when each party is entitled to the remedy.

7. No vicarious liability:-- Vicarious liability means liability incurred for another, i.e. liability of one person for the acts of

another. Parent or guardian is not vicariously liable for the liability of minor though it is for necessaries.

Exception:-- Minor's liability for necessities: Generally, minor is not liable to meet any liability. However, he is liable for necessaries supplied to him or his dependents. Necessaries include food, clothes, residence, Education, funeral expenses of parents, marriage expenses of sisters of the minor etc. Minor is held liable for necessaries under the principle of equity. Section 68 of the Indian Contract Act imposes quasi contractual obligation on Minor to meet his liability for necessaries. Relevant case on this point is:

***Kedhar Nath v. Ajundhia,* (1883) Punj. Rec. 165:--** It was held in this case that money given to minor for marriage expenses was recoverable.

B) PERSONS OF UNSOUND MIND

According to Section 11 of the Indian Contract Act, 1872, persons of unsound mind are not competent to contract.

Sound Mind:-- Section 12 defines the term 'Sound Mind'.

Section 12 of the Act provides as to what is a sound mind for the purposes of contraction. It provides:

"A person is said to be of sound mind for the purpose of making a contract, if at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind may make a contract, when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind may not make a contract, when he is of unsound mind."

Thus, if a person, at the time of making the contract is capable of understanding it and of forming a rational judgement

as to its effect upon his interests he will be deemed to be of sound mind. Even a person who is usually of unsound mind, but occasionally of sound mind, may contract when he is of sound mind. On the other hand, a person of usually sound mind, but occasionally of unsound mind, is incompetent to contract when he is of unsound mind. This provision is further clarified by the following two illustrations attached to Section 12 :

Illustrations

(a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b) A sane man, who is delirious from fever, or who is so drunk that he cannot understand of a contract, or form a rational judgement as to its effect on his interest, cannot contract whilst such delirium or drunkenness lasts.

Following are the persons of unsound mind.

1. Lunatics.
2. Idiots.
3. Drunken or Intoxicated persons.

1. Lunatics:-- A Lunatic is a person who is mentally deranged due to some mental strain or other personal experience.

In India a lunatic's contract is void. The Privy Council held in Mohari Bibi's case that under Sec. 11 of the Indian Contract Act a minor's contract is void. By parity of reasoning it should be held that lunatic's contract is also governed by Sec. 11 and hence void. So the Indian Law diverges from the English Law on this point. Both in England and in India a lunatic may enter into a valid contract during a lucid interval. In a lucid interval the mentally deranged person regains his sanity. That is the reason for vouchsafing to him contractual capacity in a lucid interval.

2. Idiots:-- An idiot is a person who has completely lost his mental power. He does not exhibit understanding of even ordinary matters.

3. Drunken or Intoxicated Persons:-- A drunken person suffers from temporary incapacity to contract. At the time, when he is so drunk or intoxicated that he is incapable of forming a rational judgment. His position is similar to that of a lunatic.

In England a drunken person's contract is voidable. In *Mathews v. Baxter*, 1873 LR 8 Ex. 132, a drunken person who did not know what he was doing agreed to purchase some horses. After becoming sober he confirmed that contract. The question arose whether the contract was binding upon him. If the contract concluded during intoxication was void, it would not be capable of ratification. It was held that the contract was only voidable and was susceptible of ratification. So the drunken person was held to be liable since he had ratified the voidable contract. In India, however, the contract of a drunken person is void.

***Inder Singh v. Parmeshwardhari Singh*, AIR 1957 Pat. 498:--** In this case, it has been held that "a person may to all appearances, behave in a normal fashion, but, at the same time, he may be incapable of forming a judgement of his own, as to whether the act he is about to do is to his interest or not, and to the contracts of such a person the law gives protection." In this case, on the death of his father, the defendant No. 1 purported to sell some properties to the plaintiff for a consideration of Rs. 7,000/- and executed a sale deed for the purpose. The properties purported to be sold under the sale deed were worth Rs. 25,000/ Mother of defendant No. 1 pleaded that her son was a congenital idiot, incapable of understanding transactions relating to transfer of properties, and that he is a man of unsound mind and mostly wanders about here and there and, therefore, the transaction made by him is void. It was held that defendant No. 1 was incapable of understanding business and forming a rational judgement as to its effect upon his interest at the relevant time and, therefore, the sale deed executed by him in favour of the plaintiff did not confer any title on them.

Distinction between English Law and Indian Law:-- Under English Law, a contract by a person of unsound mind or a lunatic is not void. It is simply voidable at his instance in case the other party knew that he was insane while entering into the contract. In India, however, a contract entered into by a person of unsound mind will be absolutely void in the same way as a contract entered into by a minor is void.

As regards drunkenness, it is clear from Illustration (b) noted above that if a man is so drunk that he cannot understand the terms of a contract, or form a rational judgement as to its effect on his interests, the contract entered into by him in such a state will be void. But mere drunkenness will not invalidate a contract. That is to say, if a man is drunk yet capable of understanding the terms of the contract and can form a rational judgement as to its effect on his interest, he may validly enter into contractual obligations.

C. PERSONS DISQUALIFIED BY LAW

The persons viz. Alien enemies, Insolvents, Convicts etc. are disqualified by law to enter into contract.

Case Comment

1. *Mohiri Bibi v. Dharmadas Ghose* (1903) ILR 30 Cal. 539 (P.C.).

Facts of the Case:-- In the instant case, the plaintiff Dharmadas Ghose was a minor. He, by misrepresenting himself as a major, executed a mortgage deed to mortgage his house for Rs. 20,000/- and received an advance of Rs. 8,000/- from Brahmo Dutt, the mortgagee (money lender). The person who was acting on behalf of the mortgagee was aware that he (Dharmadas Ghose) was not a major at the time of the contract and did not reveal the same (to his master, Brahmo Dutt). Later, the mortgagee asked the minor to hand over the house, accepting the balance Rs. 12,000/- or return/refund the advance in alternative. Neither the house was handed over nor the advance was refunded. On behalf of

the minor, his mother (as guardian and next friend) filed a suit against the mortgagee to set aside the mortgage.

Issues/Questions: The issues/questions involved in the instant case are:

1. Whether a minor can validly execute a mortgage deed?
2. Can a minor be estopped from pleading minority for falsely misrepresenting himself as a major?

1. With regard to the first question, a contract entered into with minor is *void ab initio* i.e. invalid at the very beginning. Further, according to Sec. 58 of the Transfer of Property Act, 1882, both the mortgagor and mortgagee must be competent (within the meaning of Sec. 11 of the I.C. Act, 1872) to execute a mortgage in respect of an immovable property. Therefore, a minor cannot execute a mortgage deed and it cannot be enforceable.

2. With regard to the second question, it was argued on behalf of the defendant that the plaintiff should be estopped from invoking minority for false representation that he was a major. The Privy Council in *Sadik v. Jaikishore,* (1928) PC 152, held that where a minor misrepresents that he is a major, and thereby induces another to enter into a contract, it (the contract) cannot be enforced against him.

Principle:-- The principle applied by the Privy Council in this case is, "Their Lordships are satisfied that the Indian Contract Act makes it essential that all contracting parties should be competent to contract".

Judgment/Decision:-- The Privy Council rejected the contention/defence of the defendant that the contract is voidable and held that contract between a minor and major is not voidable but is *void ab initio,* and set aside the mortgage.

Problem:-- X, a minor, represents to Y that he is a major. and borrows a sum of Rs. 20,000/- from Y and deposits it in a bank account. Subsequently X becomes major. Y sues for recovery of the amount. Decide (A.U., Sept./Oct. 99, Part-C, Q.3)

Ans. 1. This problem pertains to Minor's contract.

2. The relevant leading case on Minor's contract is: *Mohiri Bibi v. Dharmadas Ghose.*

3. When a minor falsely represents himself as a major to induce the other party to enter into a contract, the contract is *void ab initio*, but not voidable.

4. The amount of minor deposited in a Bank cannot be subject to attachment or Garnishee Order.

5. There is no ratification in respect of minor's liability. A minor need not ratify the liability after attaining majority. In other words, even after becoming a major, he is not liable for the liability incurred during his minority.

Now, write about the position of minor's contract with particular reference to

1. *Void ab initio* with *Mohiribibi's case* in detail.
2. Ratification; and
3. Estoppel.

Conclusion:-- In view of the above, X being a minor is not subject to any liability and hence, Y cannot succeed.

Questions and How to Answer

(Q) What do you mean by capacity to contract (A.U., Sept. 99, Part-A, Q.7).

Ans. Write the meaning of capacity and the requirement under Sec. 11.

(Q) Define minor (A.U., July, 2000, Part-A, Q.9).

(Q) A contract entered into with minor is void. Explain with reference to leading case law?

'OR'

What is the rule laid down in *Mohiri Bibi v. Dharmadas Ghose*?

'OR'

What is the position of Minor's contract? Under what circumstances a minor's contract can be valid? (N.U., April, 99, Part-B, Q.12).

'OR'

Briefly explain the facts of *Mohiri Bibi v. Dharmadas Ghose*. (A.U., Sept. 99, Part-A, Q.9).

Ans. Write the three rules relating to capacity to contract under Sec. 11 of the Indian Contract Act and the position of Minor's Contract.

LECTURE-VI

FREE CONSENT

Free consent is an essential element for the validity of a contract. The parties to the contract must freely and mutually agree upon the terms of the contract in the same sense and at the same time.

According to Sec. 10 of the Indian Contract Act, 1872, "All agreements are contracts, if they are made by the free consent of the parties".

This lecture contains -

1. Free Consent : Meaning & Definition
2. Flaws in Consent :
   A) Coercion (Sec. 15)
   B) Undue Influence (Sec. 16)
   C) Fraud (Sec. 17) and
   D) Mistake (Ss. 20, 21 and 22)

1. FREE CONSENT: MEANING & DEFINITION

Consent (Sec. 13):— The term 'Consent' literally means "agreed to" or comply or expressing willingness or giving acceptance.

Section 13 of the Indian Contract Act, 1872 defines consent as "two or more persons are said to consent, when they agree upon the same thing in the same sense."

The definition of the word 'consent' is based upon the decision in *Raffles v. Wichelhaus*, 1864 (159) ER 375. It is also known as "consent *ad idem*" or consensus *ad idem*. Unless and until the parties are at *ad idem* there is no contract. They must agree upon the same thing in the same sense. Thus, for a valid contract, offer and acceptance must correspond exactly to each other. For example, if the offeree is mistaken about the

offeror or about the thing offered or the terms proposed there is no consensus *ad idem* within the meaning of Section 13 of the Contract Act.

Free consent (Sec. 14):— "Consent is said to be free, when it is not caused by flaws in consent viz. coercion or undue influence or fraud or misrepresentation or mistake".

Section 14 of the Act defines 'Free Consent' as Consent is said to be free, when it is not caused by:

i) Coercion as defined in Sec. 15; or
ii) Undue influence as defined in Sec. 16; or
iii) Fraud as defined in Sec. 17; or
iv) Misrepresentation as defined in Sec. 18; or
v) Mistake, subject to the provisions of Ss. 20, 21 & 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

Where there is no consent, there is no contract: Section 14 provides that consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake. As regards the effect of consent so caused, Section 19 lays down that such an agreement is contract voidable at the option of the party whose consent was so caused. If a consent is obtained by coercion, undue influence, fraud, misrepresentation, mistake etc., the contract is voidable. In other words, the person who is made to give such consent can avoid the contract. But, the person who obtained such consent by coercion etc., cannot avoid the contract. Thus, voidable contract is a contract, which can be avoided at the option of one party only; and not at the option of the other. Therefore, not only consent but free consent is declared by section 10 to be necessary for the complete validity of a contract. Where there is no consent, or no real and certain object of consent, there can be no contract at all. Where there is consent, but not free consent, there i

generally a contract voidable at the option of the party whose consent was not free.

In the case of ***Rajinder Singh v. Promila,*** **AIR 1982 Delhi 285,** the Delhi High Court held that pre-marital status of a party to a marriage was a material fact which must be disclosed. Therefore, under Section 14, consent is said to be not free if it is caused by coercion, undue influence, etc. and it has been provided in the section that consent can be said to be so caused when it would not have been given but for the existence of such coercion; undue influence, etc.

2. FLAWS IN CONSENT

If a consent is obtained by any one of the flaws in consent, it is not a free consent and the contract is voidable. Following are the flaws in consent that render a contract voidable:

A) Coercion (Sec. 15).
B) Undue Influence (Sec. 16).
C) Fraud (Sec. 17) and
   Misrepresentation (Sec. 18)
D) Mistake (Ss. 20, 21 and 22).
   (Sec. 19 deals with validity of agreements
   without free consent).

(A) COERCION (SECTION 15)

Meaning & Definition:— Coercion is a process, by which consent is obtained by threatening to commit an act punishable under the Indian Penal Code, 1860. In simple, it means "making a person to give his consent by force or threat".

Section 15 of the Indian Contract Act defines coercion as "the committing or threatening to commit, any act forbidden by the I.P.C. or the unlawful detaining, or threatening to detain, any property to the prejudice of any person whatever with the intention of causing any person to enter into an agreement".

Coercion is said to be there where the consent of a person has been caused either by:

(i) committing, or threatening to commit any act forbidden by the Indian Penal Code, or by

(ii) unlawful detaining, or threatening to detain any property.

The threat amounting to the coercion need not necessarily proceed from a party to the contract. It may proceed from a third party or stranger to the contract.

Example: 'A' threatens 'B' with a knife to enter into an agreement with 'C'.

(i) Act forbidden by the Indian Penal Code: It has been noted above that if a person commits or threatens to commit an act forbidden by the Indian Penal Code with a view to obtaining the consent of the other person to an agreement, the consent in such a case is deemed to have been obtained by coercion. For instance, A threatens to shoot B if B does not agree to sell his property to A at a stated price, B's consent in this case has been obtained by coercion. Similarly, threat to commit suicide amounts to coercion as laid down in the following cases. The relevant leading cases on this point are stated below -

Chikkam Ammiraju v. Chikkam Seshamma, **I.L.R. (1918) 41 Mad. 33:--** In the instant case, the husband, by a threat of committing suicide, induced his wife and son to execute a release deed in favour of his brother. It was held that the contract was voidable, on the ground that the consent obtained was not free.

Ranganayakamma v. Alwar Setti, **I.L.R. (1889) 13 Mad. 214:--** In this case, a widow was forced to adopt a boy by preventing the deadbody of her husband for burial (cremation). It was held that the adoption was voidable since preventing the dead body from being removed for burial is an offence under Sec. 297 I.P.C.

(ii) Unlawful detaining of property : As pointed out earlier, coercion as defined under Section 15 of the Act includes "the unlawful detaining or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement."

But it has been held that if a mortgage imposes certain conditions for conveying the equity of redemption, it may not amount to an unlawful detaining or threatening to detain any property under Section 15 of the Contract Act.

Effect of Coercion:-- An agreement entered into under coercion is voidable at the option of one party.

Need for amendment of Section 15:-- It may be noted that committing or threatening to commit any act forbidden by the Indian Penal Code constitutes coercion. Acts forbidden by other penal laws are not included in the definition. The Law Commission of India in its Report on the Indian Contract Act has recommended amendment of Section 15 and inclusion in the definition other penal laws also. The recommendation is as under-

"The proper function of the Indian Penal Code is to create offences and not merely to forbid. A penal code forbids only what it declares punishable. There are laws other than the Indian Penal Code performing the same function. We suggest that the words "any act forbidden by the Indian Penal Code" should be deleted and a wider expression be substituted therefor so that penal laws other than the Indian Penal Code may also be included. The explanation should also be amended to the same effect.

In English Law, the near equivalent of the term coercion is "Duress".

Distinction between Coercion and Duress:-- Following are the notable points of distinction between Coercion and Duress.

i) Coercion in India means committing or threatening to commit an act forbidden by the Indian Penal Code. Duress, under

Common Law, consists in actual violence or threat of violence to a person. It includes doing of an illegal act against a person, whether it be a crime or a tort. Thus, unlike coercion, duress is not confined to unlawful acts forbidden by any specific penal law, like the Indian Penal Code in India.

ii) In India, coercion can also be there by detaining or threatening to detain any property. In other words, in coercion, an act may be directed against a person or his property. In England, duress is constituted by acts or threats against the person of a man and not against his property.

iii) In India, coercion may proceed from a person who is not a party to the contract, and it may also be directed against a person who, again, may be a stranger to the contract. In England, duress should proceed from a party to the contract and is also directed against the party to the contract himself, or his wife, parent, child, or other near relative.

iv) In England duress must be such as to affect a person of ordinary firmness of mind. In India, it is sufficient if any person does any act forbidden by IPC threatens to do any act forbidden by IPC; or detains or threatens to detain property wrongfully. Example - A threatens to assault B, if B does not execute a bond in his favour. It is coercion in India but in England one should see whether a man or ordinary firmness of mind would have been persuaded to execute the bond or not by such a threat.

(B) UNDUE INFLUENCE (SECTION 16)

Meaning:-- Undue Influence is "an improper use of any power over the other party to make him enter into an agreement". For all valid contracts free consent of the parties is necessary. The obvious consequence of this is that any influence which precludes parties from exercising their free consent in entering into an agreement will invalidate the agreement.

Example:-- If an officer induces his subordinate to give his consent to an agreement against his will, the officer is said to have employed undue influence over his subordinate.

Definition:-- Section 16 of the Indian Contract Act defines undue influence as "an influence exercised by one party over the other party, where the relationship between them is such that one party is in a position to dominate the will of the other for an unfair advantage".

Section 16 funs as follows -

"(1) A contract is said to be influenced by 'undue influence' where the relation subsisting between the parties are such that one of the parties is in position to dominate the will of the other, and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another-

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the fact of it or on the evidence adduced to be unconcionable the burden of proving that such contract was not induced by undue influence shall lie upon the person in position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of Section 111 of the Indian Evidence Act (1 of 1872)."

Effect:-- If contract is entered into by obtaining consent through undue influence, the contract is voidable.

Essentials of Undue Influence :

In order to constitute undue influence, it is necessary to prove that:

(1) the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other, and

(2) such a person uses his dominant position to obtain an unfair advantage over the other.

Relevant Case on this point is :

***Takari Devi v. Rama Dogra,* AIR 1984 H.P. 11:--** The plaintiff, an illiterate old woman was induced to execute a gift (a valuable land) in favour of her Advocate (defendant). It was held that the contract (gift) was voidable.

***Manali Singhal v. Ravi Singhal,* AIR 1999 Delhi 156:-** In this case, there was a family settlement between a husband and wife on 4th Nov. 1994 for the payment of maintenance to the wife, after the husband deserted the wife and decided to live separately.

Subsequently, since January, 1997 the husband failed to pay the agreed amount of maintenance to the wife (plaintiff No. 1) and school fees of their daughter (plaintiff No. 2). The said settlement for payment of maintenance had been made in the presence of equal number of persons representing both husband and wife and they also signed the settlement. The amount of maintenance payable was written in words and figures in hands of husband.

Under these circumstances, it was held that the said settlement had been made with the free will of the husband without any coercion or undue influence and, therefore, he was bound to abide by the settlement.

Wajid Khan v. Raja Ewaz Ali Khan, I.L.R. (1891) 18 I.A. 144:-- In this case, an old illiterate pardanashin lady, who was herself incapable of transacting any business conferred a grant of her substantial property without any valuable consideration in favour of her confidential managing agent. The Privy Council held that it was incumbent on the grantee to show that he had made proper use of confidence reposed by the lady in him and there was no undue influence.

A pardanashin woman may not be illiterate. If she practically excluded from social intercourse and communion with the outside world, she will fall in this category.

When a person enters into a contract with pardanashin or illiterate lady, the burden of proof lies on such person and he has to prove that the terms of the contract are fair and equitable, and that the document was explained to her and she understood the same, and that she acted on independent advice.

There is a presumption of undue influence in the relationship of Master and Servant; Parent and Child; Guardian and Ward; Teacher and Student; Lawyer and Client etc. The burden of proof that the contract is not induced by undue influence lies on the person, who is in a position to dominate the other i.e. the person, who employed undue influence.

Distinction between Coercion and Undue Influence

Coercion	Undue Influence
1. Sec.15 of the Indian Contract Act, 1872 defines coercion.	1. Sec. 16 of the Indian Contract Act, 1872 describes (deals with) undue influence.
2. Some relationship may or may not exist between the parties to the contract.	2. There must exist some relationship between the parties to the contract.

Coercion	Undue Influence
3. Consent is obtained under the influence of threat to commit an act forbidden by law i.e. Indian Penal Code.	3. Consent is obtained under moral influence, taking the advantage of the weaker position of the other party.
4. There exists use of physical force.	4. There exists use of moral force or mental pressure.

(C) Fraud & Misrepresentation (SECTIONS 17 & 18)

Meaning:-- It means misstatement of a fact material to the contract. It is a false statement which induces (makes) the other party to enter into a contract.

If the misstatement is **innocent** or **un-intentional** it is called **"misrepresentation"** or **"innocent misrepresentation"** (Section 18).

If the misstatement is **intentional** and **deliberate** with a view to **deceive** or **defraud** the other, it is called **"fraud"** or **"wilful misrepresentation"** (Section 17).

Example:-- 'A' sells an article to 'B' honestly believing that it is good. Later, it is found defective. 'A's statement is misrepresentation.

If 'A' sells the above article with the full knowledge of its defectiveness, it amounts to fraud.

Fraud:-- Definition (Sec. 17): According to Sec. 17 of the I.C. Act, 'Fraud' means and includes any one of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract.

(1) The suggestion as to a fact, which is not true, or does not believe it to be true;

(2) The active concealment of a fact by one having knowledge or belief of the fact;

(3) A promise made without any intention of performing it;

(4) Any other act with an intention to deceive; and

(5) Any such act or omission as the law specially declares to be fraudulent.

Besides this, explanation to Section 17 provides that :

"Mere silence as to facts likely to affect the willingness of a person to enter into contract is not fraud, unless the circumstances of the case are such that regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech."

Essential Elements of Fraud:-- To constitute fraud, the following ingredients are to be satisfied -

(1) There should be a false statement of fact by a person who himself does not believe the statement to be true.

(2) The statement should be made with a wrongful intention of deceiving another party thereto and inducing him to enter into the contract on that basis.

(1) False Statement of fact (Sec. 17(1):-- In order to constitute fraud, it is necessary that there should be a statement of fact which is not true. Mere expression of opinion is not enough to constitute fraud. If a person who is aged over 60 years and thus beyond insurable age, deliberately makes a false statement that his age is 48 years in order to take out an insurance policy, it amounts to fraud, and the insurer is entitled to avoid the policy.

***Edington v. Fitzmaurice,* (1885) 29 cH. 459:--** In this case, the defendant Co. called for debentures for repayment of some debts/liabilities. But, the director stated that the amount collected by issue of debentures would be utilised/used for the development of the Company. It was held that the directors had committed fraud.

Bhagwani Bai v. L.I.C. of India, A.I.R. 1984 M.P. 126:-- In this case, it has been held by the M.P. High Court that the non-disclosure of information about the lapsed policies by assured has no bearing on the risk undertaken by the insurer, and the same, therefore, does not amount to fradulent misrepresentation so as to entitle the insurance corporation to repudiate the contract on that ground.

(2) The statement should be made with wrongful intention:-- In order to constitute fraud, it is necessary that a person should intentionally make a false statement with an intent to deceive another party thereto to induce him to enter into the contract. If the intention to deceive the other party is absent, there is no fraud. It may, in such a case, be a mere misrepresentation as defined in Section 18 of the Act.

Misrepresentation:-- Definition (Sec. 18): When a false statement is made with the knowledge that it is false and also with the intention to deceive the other party and make him enter into a contract on that basis, it is known as fraud. But when the person making a false statement believes the statement to be true and does not intend to mislead the other party to the contract, it is known as 'Misrepresentation". When the consent of a party to a contract has been obtained by misrepresentation, it is not free consent and the contract is voidable at his option. According to Sec. 18 of the I.C. Act, 'misrepresentation' means and includes:

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him, by misleading another to his prejudice, or to the prejudice of anyone claiming under him;

(3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing, which is the subject of the agreement.

In *Derry v. Peek*, (1889) 14 A.C. 337, the directors of the defendant company stated in the prospectus of the company that they had been authorised to run tramways with steam power and also stated that the orders/sanction to that effect had yet to be obtained from the Board of Trade. The Board refused to grant the permission for the use of steam power. In an action by a shareholder against the directors of the company for fraud, it was held that there was a mere misrepresentation but no fraud.

Ingredients of Misrepresentation:-- To constitute misrepresentation the following ingredients are to be satisfied.

(1) the positive assertion in a matter not warranted by the information of the person making it, of that of which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him by misleading another to his prejudice or to the prejudice of anyone claiming under him;

(3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Distinction between Misrepresentation and Fraud

Misrepresentation	Fraud
1. It is an innocent misstatement.	1. It is a wilful misstatement.
2. The person making it has no knowledge as to its untruth.	2. The person making the statement has full knowledge as to its untruth.
3. Aggrieved party can avoid the contract but cannot claim damages.	3. Aggrieved party can avoid the contract and can claim damages also.
4. Misrepresentation by itself is not a tort.	4. Fraud by itself is a tort.

(D) MISTAKE (SS. 20, 21 & 22)

Mistake may be defined as erroneous belief about something. According to Sec. 20, it is an erroneous opinion as to the value of the thing, which forms part of the subject matter of the contract. Mistake is of two kinds as follows:

1. Mistake of fact (Sec. 20).
2. Mistake of law (Sec. 21).

1. Mistake of Fact (Sec. 20):-- There is a well known maxim *"Ignorantia facti excusat"*. It means 'Ignorance of fact excuses'. Where there is a mistake as to the fact material to the contract, it is called mistake of fact.

According to Sec. 20 of the Indian Contract Act, 1872, "where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void".

Example:-- 'A' agrees to buy an article from 'B'. At the time of contract, it is found defective. Neither of the parties had knowledge as to this fact.

Kinds of Mistake of Fact: It is of two kinds namely:—

1. Unilateral Mistake; and
2. Bilateral Mistake.

1. Unilateral Mistake:-- Mistake exists on either of the parties to the contract.

Example:-- 'A' agrees to purchase a Radio from 'B', thinking that it is a new one. In fact, it is not new. If 'A's erroneous belief that the radio is new, was not known to 'B', 'A' cannot avoid the contract. If 'A's mistake was known to 'B', then 'A' can avoid the contract.

2. Bilateral Mistake:-- Mistake exists on the part of both the parties to the contract.

Example:-- 'A' agrees to buy an article from 'B'. Both the parties ('A' & 'B') are aware of the fact that the article is defective. It is a bilateral mistake and is void.

The relevant leading and recent case on this point is -

***Great Peace Shipping Ltd. v. Travliris Salvage (International) Ltd.*, (2002) 3 WLR 1617:--** In this case the contract related to the hire of vessel for five days to escort and stand by stricken vessel. Both the parties were mistaken about the proximity of vessel. Fearing for the safety of the crew, the defendants sought a merchant vessel in the vicinity to assist. While the parties thought that the closest salvage vessel was about 35 miles away, vessels were in fact 410 miles apart.

A few hours later, assistance was obtained from a closer vessel. Even after coming to know the distance of salvage vessel, the defendant (appellant here) did not terminate the contract. But instead of seeking its asistance they took the assistance of a closer vessel and refused to make any payment for the hire of the vessel. The claimants sued the defendants (appellants in this case) for money payable under contract or as damage for wrongful repudiation. The judge decided in favour of claimants (i.e. respondents in this appeal).

2. Mistake of Law (Sec. 21):-- *"Ignorantia Juris non excusat"*, is a popular maxim. It means **"Ignorance of law is no excuse".** In other words a party cannot get any exemption from the act done in ignorance of law. It is called mistake of law.

Example:-- According to Law of Limitation, a creditor cannot sue the debtor after the period of limitation i.e. after three years. The creditor cannot plead that he had no knowledge as to the rule.

According to Sec. 21 of the Indian Contract Act, 1872, "a contract is not voidable because it was caused by a mistake as

to any law in force in India, but a mistake as to a law not in force in India, has the same effect on a mistake of fact.

Effect:-- A mistake of law does not invalidate the contract.

Sections 13, 20, 21 and 22 of the Indian Contract Act deal with the law relating to mistake. It has been rightly pointed out that "The above sections of the Contract Act are merely guidelines. The true position is, however, laid down by the series of decisions mainly by courts in England, which are also followed in India being in conformity with the provisions of the Contract Act. But even so, it cannot be said that the final say on the various aspects of 'mistake, has already been made.....any chapter on mistake, in any treatise on the Law of Contract will have to be revised again and in the light of new developments or new interpretations of the old principles and rulings" (G.M. Sen, Case Book on the Law of Contract, pp. 106-7).

Questions and How to Answer

(Q) What is consent? When it is free? 'OR' Want of free consent vitiates a contract and renders it void or voidable - Discuss.

Ans. Write in brief about consent, free consent, and flaws in consent viz. coercion, fraud etc.

(Q) What is coercion, and what is the effect of contract entered under coercion? (A.U., Model Q.P., Part-A, Q.6).

Ans. Coercion is one of the flaws in consent, that renders a contract voidable. (Write now, about coercion).

(Q) Write about undue influence. (A.U., July 2000, Part-A, Q.8).

(Q) What is meant by misrepresentation. (A.U., Sept. 99, Part-A, Q.4, and A.U., July 2000, Part-A, Q.10).

Ans. It is a flaw in consent that renders the contract voidable. (Write now about misrepresentation).

(Q) Discuss the element of fraud. How do you distinguish it from misrepresentation? (N.U., April, 99, Part-A, Q.6)

'OR'

Define Misrepresentation and distinguish it from Fraud? (S.V.U., Nov. 99, Part-B, Q.11).

Ans. Fraud and Misrepresentation are the flaws in consent that render the contract voidable. Write now about fraud and misrepresentation and distinguish the same (in detail for essay question and in brief for short question).

LECTURE-VII

LAWFUL OBJECT OR LEGALITY OF OBJECT

A contract to be valid, the object for which it has been entered into must be lawful. According to Section 23 of the Indian Contract Act, 1872, "*an agreement entered into with unlawful consideration or object is declared void*". Sec. 23 runs as follows -

The consideration or object of an agreement is lawful, unless-

-- it is forbidden by law; or

-- is of such a nature that, if permitted, it would defeat the provisions of any law; or

-- is fraudulent; or

-- involves or implies, injury to the person or property of another; or

-- the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

In other words, an agreement is said to be void if it is:—

(i) forbidden by law; or

(ii) defeats any provisions of law; or

(iii) fraudulent; or

(iv) causing injury to person or property of another; or

(v) immoral or opposed to public policy.

An agreement entered into **against the interests of general public** is deemed to be **opposed to public policy**. In other words, an agreement, which is **harmful to public welfare is said to be opposed to public policy.** Such agreements are:

1. Agreement in restraint of Trade (Sec. 27).
2. Agreement in restraint of Marriage (Sec. 26).
3. Agreements in restraint of Legal Proceedings (Sec. 28).
4. Agreements void for uncertainty. (Sec. 29).
5. Agreement to commit a Crime.
6. Agreement with Alien.
7. Wagering Agreement (Sec. 30).

The above agreements, which are harmful to the public welfare and are opposed to the public policy are discussed below-

1. Agreement in restraint of trade
(Section-27)

Section 27 of the Indian Contract Act, 1872, says that "*every agreement by which any one is restrained from exercising a lawful profession, trade, or business of any kind is to that extent void*". This section declares that agreements in restraint of trade are void except in cases specified in the exception-1 (Exception 2 and 3 repealed by Act 9 of 1932).

Exception 1: **Saving of agreement is not to carry on business of which goodwill is sold:--** One who sells the goodwill of a business, may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

Public Policy underlying Sec. 27:-- Public policy requires that every one should be free to exercise his profession, i.e., occupation and to pursue his business (i.e., buying and selling goods and services) and trade i.e., any special line of business. This freedom is necessary for the economic prosperity of society. It encourages competition and promotes industry. Agreements in restraint of this freedom are against public policy and are void. This principle is subject to certain exceptions. Thus if a trader

sells his business to A, he may promise A that he will not engage in the same business in the same town. Though such a contract restricts his freedom to trade, it may be reasonable. Sec. 27 and the exception give effect to this public policy. Exceptions 2 and 3 have been repealed but they find a place now in Secs. 11(2) and 55 of the Partnership Act, 1932.

Further, Article 19(1)(g) of the Indian Constitution guarantees freedom of trade, profession or business. An agreement, which interferes with freedom of trade is said to be an agreement in restraint of trade and is contrary or opposed to public policy and is declared void. However, reasonable restrictions may be imposed upon the freedom of trade. (Art. 19(6) of the Indian Constitution deals with reasonable restrictions). The object behind this public policy is to strengthen the trade and to avoid monopoly.

The law relating to agreements in restraint of trade was laid down in the case of:

***Nordenfelt v. Maxim Nordenfelt Guns and Ammunition Co.* (1874) AC 535.**

Facts of the Case:-- Nordenfelt, the defendant in the instant case was a Swedish National. He sold his business of quick firing guns to the plaintiff Company for £2,87,500 against the following two conditions (restraints/covenants):

1. that for 25 years, he would not engage in the similar business (i.e. manufacturing of quick firing guns) except on behalf of the Company. (In simple, not to carry on similar business except on behalf of the company for a period of 25 years) and

2. that he would not engage in any business, whatever likely to compete in any way with the business carried on by the company (not to engage any business, which may complete in any way with the plaintiff company).

Issues/Questions involved:-- The issues involved in the instant case were:

1. Whether the defendant was bound by the above two restraints (conditions/covenants)?
2. Whether the restraints were void?

With regard to the first question, the defendant was to be bound by the first condition/covenant, since the defendant had sold the very business of the manufacturing guns for a large sum of money. However, the defendant was not bound by the second condition, which prevented him from engaging in any other competing business.

With regard to the second question, if a covenant imposes general restraint on trade, which extends to the territory as a whole, it is void. Hence, the second covenant in the instant case is void. However, a general restraint, is not void at all times, but may be valid provided; it is found to be reasonable both to the parties and the general public. Therefore, the first restraint is reasonable to both the parties because the plaintiff company purchased business for a huge sum and the defendant sold away the business. It (1st condition) is also reasonable from the point of view of the general public, since an English Company was deriving (getting) benefit of the invention of a foreigner, a Swedish National. Therefore the first covenant is valid (not void).

Decision/Judgement:-- The court (House of Lords) considered the first condition (covenant) as reasonable, since the defendant had sold the business for a huge amount and granted the injunction. But, the second condition, which prevents the defendant from engaging in any other competing business, was regarded unreasonable (as the restraint/condition would not protect the proprietory interest of the plaintiff company).

Principles Laid Down:-- The principles laid down in the instant case are:

1. All restraints of trade, in the absence of special justifying circumstances are contrary to public policy and therefore void. (All restraints of trade are opposed to the public policy and hence are void, unless there is some justification recognised by law).

2. A restraint can only be justified, if it is reasonable:

   (a) in the interests of contracting parties; and

   (b) in the interests of the public. (A restraint on trade can be declared valid, provided it is found to be reasonable to:

      (i) the parties to the contract, and

      (ii) the general public).

The Supreme Court in:

***Krishna Murgani v. Superintendence Company of India Pvt. Ltd.*, AIR 1979 Del. 232**, a contract of employment stipulated that the employee ought not to join any firm of competitors of his employer in Delhi or run a similar business of his own for two years in Delhi after his employment ceased. The employee's services were terminated after seven years. He then set up in Delhi his own business similar to that of the quondam employer's. It was held that such a restraint on trade after the contract of employment ceased, is void.

In ***Madhub Chander v. Raj Coomar*, (1874) XIV Bengal Law Reports 76:--** In the instant case, the plaintiff and defendant were running the same business in the same locality. As the defendant suffered loss, requested the plaintiff to close his business against payment of certain amount. As the defendant failed to pay, the plaintiff sued the defendant. The Court dismissed the plaintiff's claim on the ground that the agreement was in restraint of trade.

Exceptions:-- Following are the exceptions to the general rule that agreements in restraint of trade are void. In other words,

agreements in restraint of trade are valid in respect of the following cases:

1. Sale of Goodwill.
2. The Partnership Act, 1932.
3. Trade Combinations, and
4. Service Contracts.

1. Sale of Goodwill:-- Goodwill is an intangible asset. It is the name and reputation of a business house. This exception enables the buyer of the goodwill of a business to impose reasonable restrictions on the seller of the goodwill.

2. The Partnership Act, 1932:-- The Act provides for three exceptions, which validate the agreements in restraint of trade namely:

(i) A partner cannot carry on any other business except partnership business (Section 11(2).

(ii) An outgoing partner may be restrained from carrying on similar business within specified local limits for a specific period (Section 36(2).

(iii) In anticipation of dissolution of the firm, partners can make an agreement not to carry on similar trade within specified local limits for a specific period.

3. Trade Combinations:-- Traders or Manufacturers carrying on same business may form associations to regulate business or to fix prices. Agreements in restraint of trade, if any in this connection are not void.

4. Service Contracts:-- In a contract of service, the employer may impose certain reasonable restrictions on the employee with regard to his (employee's) freedom of trade. An Agreement in restraint of trade, if any, between Employer and Employee in that connection is not void. Such restrictions are binding on the employee

during the period of employment (but not after the expiry of the period of the employment).

Problems:--

(1) A takes up service as an Assistant Doctor under B for two years. He agrees that after he has ceased to be in B's service he will not set up medical practice in the same town in which B is practising. After two years A sets up a rival medical practice in breach of the agreement. Advise B.

The agreement is a restraint upon the exercise of a profession. Such an agreement merely for the avoidance of competition is unreasonable and void. So B has no remedy.

(2) A agrees to sing at B's theatre for one week and also agrees not to sing in any other theatre during that period. Then she contracts with C to sing during that same week at C's theatre. Advise B.

Here A is engaged to sing at B's theatre during one week. The restraint on A's right to sing elsewhere is confined to this period of A's service with B and not beyond that period. So it is a reasonable condition and is enforceable. B can sue for an injunction to restrain A from singing at C's theatre during that week. *Lumley v. Wagner,* 1852 IDM & G 604.

2. AGREEMENT IN RESTRAINT OF MARRIAGE (S.26)

Marriage is not only a sacrament and sacrosanct, but also a civil contract. An agreement or contract to marry is valid subject to fulfilment of certain conditions as per the respective personal laws. (Eg. Hindu Marriage is valid subject to fulfilment of the conditions under Section 5, Hindu Marriage Act, 1955). Therefore, an agreement/contract in restraint of marriage is opposed to public policy and is void.

Section 26 of the Indian Contract Act, 1872 says that every agreement in restraint of the marriage of any person, other than a minor, is void.

Such agreement in restraint of marriage may be partial or total as illustrated below:

Example: 'A' promises to pay Rs. 50,000/- to 'B', if he (B) does not marry 'C'. This agreement imposes partial restraint upon the freedom of 'B', to marry 'C' only.

In the above example, if 'A' promises to pay Rs. 50,000/- to 'B', if he (B) does not marry anyone and remains unmarried, the restraint on 'B's freedom to marry is total.

Whether the restraint is partial or total, an agreement in restraint of marriage is void, and hence, cannot be enforceable. Relevant case on this point is:

Lowe v. Peers: In this case, a man (defendant) promised Mrs. Latherine Lowe that he would not marry anyone other than Mrs. Lowe and promised further to pay Mrs. Lowe, a sum of £2000 on default (i.e. if he marries any one other than Mrs. Lowe). The agreement was held void on the ground that it was against the public policy.

Section 26 of the I.C. Act does not cover (deal with) the agreements in restraint of re-marriage. So, an agreement in restraint of remarriage is not declared void and may be valid.

Position in England:-- In England, only an absolute and total restraint on marriage is void. Therefore, partial restraint may be valid in certain circumstances.

Marriage brokerage contract:-- A marriage brokerage contract is one, in which promise is made to pay certain sum of money in consideration of procuring a marriage. Marriage brokerage contracts, which are quite obvious in the society, are opposed to the public policy and are void. If the marriage is performed (as a consequence of such contract) the validity of marriage will not be affected. Only the agreement promising money in lien of marriage is void. The amount paid under the agreement cannot be recovered (but, the courts allowed the claims in certain cases).

In *Suryanarayana Murty v. Krishna Murty* it was held that, "if pecuniary gain is made as the consideration of marriage, it is bound to be condemned as reprehensive to all sense of decent morals". (In simple words, the court held the contract void and denied the claim).

Agreement for future separation between Husband and Wife : An agreement for the future separation of husband and wife is opposed to public policy.

In *Sardhya Chatterjee v. Salil Chandra,* **AIR 1980 Cal. 244,** A had filed a suit against her husband B for separate maintenance. B offered to pay her Rs. 260/- per month. A accepted the offer and allowed her suit to be dismissed. B made payment for sometime and then defaulted. A now sued for recovery of the amount due under the agreement. B resisted the suit on the ground that the agreement was opposed to public policy. It was held that the question of public policy would be involved only if the agreement between husband and wife was for future separation. But if it is for immediate, i.e. present separation, as in this case, the agreement to pay separate maintenance is not hit by public policy. So the wife was held entitled to enforce the agreement.

3. AGREEMENTS IN RESTRAINT OF LEGAL PROCEEDINGS (S.28)

According to Sec. 28 of the Indian Contract Act, 1872, (as amended by Indian Contract (Amendment) Act, 2013 (4 of 2013).

Every agreement —

(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or

(b) which extinguishes the rights of any party, or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent.

Exception 1:-- Saving of contract to refer to arbitration dispute that may arise.- This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Exception 2:-- Saving of contract to refer questions that have already arisen.- Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

Exception 3 :-- **Saving of a guarantee agreement of a bank or a financial institution :--** This section shall not render illegal a contract in writing by which any bank or financial institution stipulate a term in a guarantee or any agreement making a provision for guarantee for extinguishment of the rights or discharge of any party thereto from any liability under or in respect of such guarantee or agreement on the expiry of a specified period which is not less than one year from the date of occurring or non-occurring of a specified event for extinguishment or discharge of such party from the said liability.

Explanation :--(i) In Exception 3, the expression "bank" means--

(a) a *"banking company"* as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(b) *"a corresponding new bank"* as defined in clause (da) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(c) *"State Bank of India"* constituted under Section 3 of the State Bank of India Act, 1955 (23 of 1955);

(d) *"a subsidiary bank"* as defined in clause (k) of Section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);

(e) a *"Regional Rural Bank"* established under Section 3 of the Regional Rural Bank Act, 1976 (21 of 1976);

(f) *"a Co-operative Bank"* as defined in clause (cci) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(g) *"a multi-State Co-operative Bank"* as defined in clause (cciiia) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949); and

(ii) In Exception 3, the expression *"a financial institution"* means any public financial institution within the meaning of Section 4-A of the Companies Act, 1956 (1 of 1956).

According to Sec. 28 of the I.C. Act, no person, by entering into an agreement can be restrained from enforcing his rights under the contract or any other rights through a court of law. In other words, there is no contract, if an agreement is entered into between the parties not to go to a court of law in case of breach. Such agreement is void.

According to Sec. 2(h) of the I.C. Act, an agreement becomes contract, only when it is enforceable. There can be no agreement restraining the enforceability. In other words, if the parties to a contract enter into an agreement not to sue one another in the event of breach, such agreement is void. The very object of Sec. 28 is, not to allow the parties to oust (take away) the jurisdiction of the courts by agreements.

Further, an action can be instituted (suit can be filed) within the period of limitation as provided for under the Limitation Act (The Indian Limitation Act, 1963). If the parties, by entering into an agreement, agree to reduce the period of limitation for enforcing the claim, such agreement is void. For instance, the period of limitation in respect of Promissory Note is three years. If the period of three years is reduced by an agreement, it is void.

Relevant case law:

Bennet v. Bennet — The plaintiff in this case (wife) filed a petition against her husband for maintenance. While the petition was pending before the Court, she entered into an agreement with her husband not to proceed with the petition against his promise to pay maintenance. On default by the husband, she sued him. It was held that the covenant (agreement) by the plaintiff with her husband not to proceed with the petition was void.

4. AGREEMENTS VOID FOR UNCERTAINTY (SEC. 29)

A contract to be valid and enforceable, the terms of the contract/agreement must be clear and certain. Otherwise, it is void. Section 29 of the Indian Contract Act, 1872 envisages that, "agreements, the meaning of which is not certain, or capable of being made certain, are void.

E.g.: A agrees to sell to B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

K Chorda v. Esso Standard Eastern Inc., 1975 (1) MLJ 65 : In this case, it has been pointed out that the principle in determining the question whether a contract is void for uncertainty, it has to be ascertained whether the agreement is capable of being made certain. The document might have been couched in terms, which might introduce an element of uncertainty, but the court has to consider all the circumstances of the case to see whether the terms are capable of being made certain.

5. AGREEMENT TO COMMIT CRIME

An agreement to commit crime is an illegal contract. An illegal contract is one, which is immoral or against the law. An illegal contract is void and also a crime under Section 120-A (Criminal Conspiracy) of the Indian Penal Code. It is not only void but also an offence. However, every void contract is not illegal.

Example:-- 'A' and 'B' enter into an agreement to commit an illegal act (to carry on some business or to undertake some work, forbidden by law) or a legal act by illegal means (eg. admission into Engineering/Medicine ignoring/violating the rules/merit.).

Sections 120.A and 120.B of the Indian Penal Code, 1860 deal with Criminal Conspiracy. These two sections were inserted in I.P.C. by Criminal Law (Amendment) Act, 1913 with a view to make 'Criminal Conspiracy a substantive offence'. Section 120.A defines the offence and Sec. 120.B provides/prescribes punishment for the offence.

Meaning and Definition:-- Etymologically, the word 'Conspiracy' means "breathing together". It is not possible to breathe together unless the heads are put together. Hence, conspiracy is an act for which atleast two persons are essential. In other words, when two or more persons agree to commit a crime, they are said to have conspired. It is immaterial, whether the crime is committed or not. The persons are called 'conspirators'.

English Law defined conspiracy as 'an agreement of two or more persons to do an illegal act or a legal act by an illegal means'.

Section 120.A defines Criminal Conspiracy, which read as follows :

When two or more persons agree to do, or cause to be done

1. an illegal act; or
2. an act which is not illegal, by illegal means, such an agreement is designated as a criminal conspiracy;

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation:-- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Ingredients or Essentials:-- To constitute criminal conspiracy, the following ingredients are to be satisfied.

1. There must be an agreement between the persons, who are alleged to conspire; and
2. The agreement should be;
   i) for doing of an illegal act; or
   ii) for doing by an illegal means an act, which may not itself be illegal.

In simple words, to constitute criminal conspiracy,

1. There must be an agreement between two or more persons.
2. The agreement must be for:
   i) doing an illegal act; or
   ii) doing a lawful act by illegal means; and
3. There must exist overt act.

1) Two or more persons:-- To constitute the offence of conspiracy, there must be an agreement of two or more persons. It was laid down in ;

***Topandas v. State of Bombay,* (1955) 2 SCR 881 : AIR 1956 SC 33:**

That "there must be two or more persons and one person alone can never be held guilty of criminal conspiracy", and this

view was approved by the Supreme Court in *Haradhan Chakraborty v. Union of India*, (1990) 2 SCC 143 : AIR 1990 SC 1210.

Under Common Law, husband and wife constitute one person and hence, there cannot be any conspiracy to commit an offence. But, in India, husband and wife by themselves alone can be parties to a criminal conspiracy.

Whether single person can be convicted for conspiracy ?

The question is, whether a single person can be convicted for criminal conspiracy ?

The rule that "one person alone cannot be held guilty of criminal conspiracy was abolished by Section 5(8) of the Criminal Law Act, 1977, which provides that "unless conviction of one becomes inconsistent with the acquittal of the other even one of the two conspirators can be convicted".

Thus, the question that, whether a single person can be convicted for conspiracy was answered/decided in affirmative by the Supreme Court in ***Bimbadhar Pradhan v. State of Orissa*, AIR 1956 SC 469; 1956 SCR 206.**

The accused alongwith four other subordinates was charged with the offence of criminal conspiracy to misappropriate Government funds. The Sessions Court acquitted the four subordinates and convicted him. On appeal to High Court, he was acquitted on the other charges, but conviction against conspiracy was confirmed by the High Court. He preferred an appeal before the Supreme Court. The Supreme Court upheld the conviction and laid down that, conviction of a single person against the criminal conspiracy is legal.

2) Agreement:-- The offence of conspiracy is complete as soon as the parties agreed to do an illegal act or a legal act by an illegal means. Mere agreement is enough. It is immaterial even if nothing has been done in pursuance of the act.

3) Illegal Act or Legal Act by an illegal means:-- To constitute criminal conspiracy, the agreement entered into between the parties/conspirators must be for the committing/doing an illegal act or legal/lawful act by illegal means.

Punishment:-- Section 120.B of I.P.C. makes provision for punishment of the conspiracy. In case conspiracy is to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or more and no more and no specific punishment for the same is provided for under the code, the conspirators shall be punishable as abettor. In other cases, the conspirators are punishable with imprisonment for a term not more than 6 months or fine or with both fine and imprisonment.

Section 120.B reads as follows:

1. Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
2. Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

6. AGREEMENT WITH ALIEN

When there is a war between two countries, it is unlawful and against public policy that a person should trade with a subject of the enemy country. "The King's subject cannot trade with an alien enemy, i.e. a person owing allegiance to the Government at war with the King, without the King's licence". During the war it is unlawful either to enter into such a contract, or to perform a contract entered into before the war broke out.

If agreements with the enemy country are not made unlawful, then the commercial transactions between the two countries may have the effect of promoting economic interest of the enemy country and prejudicing the interest of one's own. If some rights in respect of a contract have already accrued, the outbreak of the war does not put an end to those rights but their enforcement is suspended until the hostilities are over.

7. WAGERING AGREEMENT (SEC. 30)

This topic is discussed in detail in the next/following chapter (Chapter VIII).

Questions and How to Answer

(Q) Agreements in restraint of trade are void - Discuss.

Ans. An agreement in restraint of trade is one among those agreements, which are declared void on the ground, opposed to public policy.

Write now, in detail about the agreement in restraint of trade.

(Q) What is the rule laid down in *Nordenfelt v. Maxim Nordenfelt Co.*?

Ans. This question refers to the rule laid by the House of Lords for deciding the validity of agreements in restraint of trade. Agreement in restraint of trade is one among those agreements, which are declared void on the ground, opposed to public policy.

Write now in detail about agreement in restraint of trade which includes the 'Rule laid down in *Nordenfelt v. Maxim Nordenfelt Co.*'.

(Q) Write about the effect of marriage brokerage contracts? (A.U., Model Q.P., Part-A Q.7).

Ans. It is one of the agreements opposed to public policy. Now write about marriage brokerage contract.

LECTURE-VIII

WAGERING AGREEMENTS (SEC. 30) AND CONTINGENT CONTRACTS

This lecture deals with

1. Wagering Agreement or Contract of Wager (Section 30)
   i) Wager : Meaning and Definition
   ii) Effect of Wagering Contracts
   iii) Wagering Agreement and Insurance Contract.
2. Contingent Contract (Ss. 31-36)
   i) Contingency : Meaning and Definition
   ii) Enforcement of Contingent Contract
   iii) Distinction between Contingent Contract and Wagering Contract

1. WAGERING AGREEMENT OR CONTRACT OF WAGER

i) Wager : Meaning and Definition:-- The term 'Wager' literally means 'bet'. It has not been defined under Sec. 30 of the Indian Contract Act. Sir William Anson defines "wager" as a promise to give money or money's worth upon the determination or ascertainment of an uncertain event. However, the nature of wagering agreement was explained by **Hawkins, J.** in *Carlill v. Corbolic Smoke Ball Co.* (1892) as follows:

"A wagering contract is one by which two persons, professing to hold opposite views touching the issue of a future uncertain event mutually agreed dependent upon the determination of the event that one shall win from the other a sum of money, neither of the contracting parties having any other interest".

According to Section 30 of the Indian Contract Act, 1872 wagering agreements are void. Section 30 runs as follows -

Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide by the result of any game or other uncertain event on which any wager is made.

Exception in favour of certain prizes for horse-racing.- This section shall not be deemed to render unlawful a subscription, or contribution, or agreement to subscribe or contribute, made or entered into for or towards any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.

Section 294-A of the Indian Penal Code not affected:- Nothing in this section shall be deemed to legalise any transaction connected with horse-racing, to which the provisions of Section 294-A of the Indian Penal Code (45 of 1860) apply.

ii) Effect of wagering contracts:-- In wagering contract, neither of the parties has any interest in the contract other than the sum, he will so win or lose, there being no other real consideration and hence, the agreement is void.

In England, Section 18 of the Gaming Act, 1845 provides: "All contracts or agreements, whether by parole or in writing, by way of gaming or wagering, shall be null and void: and no suit shall be brought or maintained in any court or law of equity for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made." Section 30 of the Contract Act is based on the above section.

In ***Dayabhai v. Lakshmichand,*** **ILR 1885(9) Bom. 358,** it was observed by Birdwood, J. "If one of the parties has the event in his own hands, the transaction lacks an essential ingredient of a wager" that is to say, if there is only gain and no loss, or there is only loss and no gain, the contract will not be wager.

In *Sasson v. Tokersey*, ILR 1904 (28) Bom. 616, Jenkins, C.J. observes : "It is of the essence of a wager that each side should stand to win or lose according to the uncertain or unascertained, event in reference to which the chance or risk is taken".

Essentials of Wager:-- Following are the essential elements of a wagering agreement.

1. The parties must have opposite views regarding an uncertain event.
2. There are chances of gain or loss to the parties on the determination of the event one way or the other.
3. The parties have no other interest except winning or losing of bet.

Example:-- 'A' bets with 'B' Rs. 50,000/- that a particular party will come to power. 'B' accepted the same hoping that party would not come to power. It is an agreement by way of wager. 'A' cannot sue 'B' for recovery of the amount since it is a wagering agreement and is void.

A wagering agreement is void, but it is not forbidden by law.

Exception:-- Section 30 of the Indian Contract Act provides for an exception in favour of certain prizes for horse-racing. However, this exception is subject to Section 294-A of the Indian Penal Code.

***Muthuswamy Pillai v. Veeraswamy Pillai* (1936)**: In this case, the plaintiff and defendant went to horse race and jointly purchased a ticket in the name of the defendant. The horse won the race. The defendant received the amount and did not give half share to the plaintiff. The plaintiff's suit against the defendant was held actionable.

In Maharashtra, the Government by passing 'The Bombay Avoiding of Wagers (Amendment) Act, 1865 declared all wagering agreements as illegal and void. In 1958, the Law Commission

recommended to amend Sec. 30 of the Indian Contract Act to incorporate the provisions of the above Act so as to maintain uniformity of law on the subject throughout the country. But no such amendment has been made so far.

iii) Wagering Agreement and Insurance Contract:-- Like a wagering agreement, the contract of insurance also depends upon a future uncertain event i.e. death of a person or destruction of the property. But the insurance contract is not a wagering agreement. Following are the differences between the wagering agreement and Insurance Contract.

Distinction between Wagering Agreement and Insurance Contract

Wagering Agreement	Insurance Contract
1. It is void.	1. It is valid.
2. Parties do not have insurable interest.	2. Parties will have insurable interest.
3. Risk of loss or gain is created by the parties.	3. Such risk is not created but natural.
4. The amount agreed is not enforceable.	4. The amount agreed is enforceable.
5. It affects the interests of the parties.	5. It protects the economic interests of the parties.

2. CONTINGENT CONTRACT

Chapter III containing Sections 31 to 36 of the Indian Contract Act, 1872 lays down the provisions relating to the contingent contracts. Section 31 defines contingent contract, Section 32 deals with the enforcement of contracts contingent on an event happening. Section 33 deals with enforcement of contracts contingent on an event not happening, section 34 deals with "When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person", section 35 deals with "When contracts become void which are contingent on happening of specified event within fixed time" and section 36 deals with agreements contingent on impossible events, void.

i) Contingency : Meaning and Definition :

The expression **'Contingency'** means **"Something related to a possible future and uncertain event".** The happening of an event is uncertain. Even it happens, when it happens is uncertain. It is also called as conditional contract. It is valid and enforceable.

Eg. 'A' promises 'B' to transfer his property, if he (B) marries 'C'. Here, 'B's interest in the property is contingent.

Definition: Sec. 31 of the Indian Contract Act, 1872 defines 'Contingent Contract' as "a contract to do or not to do something, if some event collateral to such contract does or does not happen."

Eg. Fire insurance contract, in which the Insurance Co. promises to indemnify the loss caused to the property as a consequence of the fire.

Essential Elements:-- Following are the essential elements of a contingent contract.

1. The performance of the contract depends upon the happening or non-happening of some future event.
2. Happening of the event must be uncertain at the time of the agreement.
3. The future uncertain event must be collateral to the contract.

Relevant case law :

***Bashir Ahmed v. Govt. of Andhra Pradesh,* AIR 1970 SC 1089:--** In this case the government of Hyderabad agreed to purchase plaintiff's book of Unani medicinal prescriptions, 'Tohra-e-Osmania' with a view to floating a limited company for the manufacture and sale of Unani medicines. The total compensation determined to be payable to him was Rs. 2,00,000/-. A sum of Rs. 50,000/- was paid to him as advance and the book was taken from him. Proposal to form the company did not materialise. The plaintiff sued to recover the balance of the sum agreed, i.e. Rs.

1,50,000/-. The defendant refused to pay the amount. It rather wanted to return the book and claimed the refund of Rs. 50,000/- on the ground that the contract was contingent upon the floating of the company. It was held that the contract was not a contingent one and the plaintiff had a right to enforce the contract.

Secretary of State for India v. Arathoon, **ILR (1878) 8 Mad. 173:--** In this case, the plaintiff contracted to supply certain quantity of timber to Government under the condition that the timber would be rejected if not approved by the Superintendent of the Gun Carriage Factory. It so happened that the timber supplied by the plaintiff was not approved by the Superintendent and consequently it was rejected. The plaintiff filed the suit for the breach of contract on the ground that tendered timber was as described under the contract. The Madras High Court held that the contract was contingent in nature depending upon the goods being approved by the Superintendent and, therefore, the plaintiff could not question the reasonableness of the Superintendent's disapproval.

Aghore Nath Banerjee v. Calcutta Tramways Co., **ILR (1985) 11 Cal. 232:--** In this case, a conductor for getting employment in the defendant company was required to deposit a sum of money as security and the contract in question provided that his deposit would be forfeited if there was any dereliction of duty on his part and whether there was any dereliction of duty would be decided by Company's manager and his decision would be final and conclusive in this connection. It was held that it was a clear case of contingent contract and the decision by the manager regarding dereliction of duty for the forfeiture of deposit constituted the contingency.

ii) Enforcement of Contigent Contract:-- The following are the rules governing the enforcement of the various kinds of contingent contracts :

1. Contracts contingent on an event happening:-- Contingent contracts to do or not to do anything if an uncertain

future event happens cannot be enforced by law unless and until that event has happened.

If the event becomes impossible, such contracts become void.

Illustrations :

(a) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's life-time.

(b) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered refuses to buy him. The contract canot be enforced by law unless and until C refuses to buy the horse.

(c) A contracts to pay B a sum of money. When B marries C. C dies without being married to B. The contract becomes void.

2. Contracts contingent on the event not happening:- Contingent contracts to do or not to do anything if an uncertain future event does not happen, can be enforced when the happening of that event becomes impossible, and not before.

Illustrations:

A agrees to pay B a sum of money if a certain ship does not return. This ship is sunk. The contract can be enforced when the ship sinks.

3. Contract contingent on the future conduct of a living person:-- If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders impossible that he should so act within any definite time, or otherwise than under further contingencies.

Illustrations :

A agrees to pay B a sum of money if B marries C. C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die, and that C may afterwards marry B.

4. Contracts contingent on happening of specified event within fixed time:-- Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

Illustration :

A promises to pay B a sum of money if certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

5. Contracts contingent on not happening of specified event within a fixed time:-- Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

For example, A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

6. Agreements contingent on impossible event:-- Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Illustrations :

(a) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(b) A agrees to pay B, 1000 rupees if B will marry A's daughter, C. C was dead at the time of the agreement. The agreement is void.

iii) Distinction between contingent contract and wagering contract:-- Following are the notable points of distinction between the contingent contract and the wagering contract.

Contingent Contract	Wagering Contract
1. It depends on the happening or non-happening of some future event.	1. It depends on the happening or non-happening of some future event.
2. The event must be uncertain at the time of the contract.	2. The event must be uncertain at the time of the contract.
3. The event must be collateral to the contract.	3. The future event is the sole determining factor.
4. The promisor may have some interest in the event.	4. Parties may not have any interest in the event except the amount they may win or lose.
5. It is a valid contract	5. It is void. In England it is not only void but also illegal.
6. Collateral transactions are also valid.	6. In England collateral transactions are void. But in India collateral transactions are valid because wagering agreement is only void and not illegal.

Questions and How to Answer

(Q) What is meant by wagering contract. (A.U., July 2000, Part-A, Q.5).

Ans. Write in brief about wagering agreement.

(Q) What are the essentials of wagering contract? (A.U., Sept. 1999, Part-A, Q.5).

Ans. Write meaning, definition and essentials.

(Q) What do you understand by a contingent contract and explain the legal position under Indian Contract Act? (A.U., Sept. 99, Part-B, Q.3).

Ans. Write in detail about contingent contract.

LECTURE-IX

DISCHARGE OF CONTRACT

In a contract, the parties have to fulfil their contractual obligations. When such obligations come to an end, the contract is said to be discharged. In other words, discharge of contract means 'termination of contractual relationship between the parties'. In short, contract is said to be a discharged, when it ceases to operate/exist. A contract may be discharged in positive (i.e. by performance) or in negative (i.e. by breach or failure to perform contractual obligation by either of the parties). (For instance, a student's contract with the college stands discharged on expiry of the term of his course i.e. he will have to leave the college with T.C. after completion of the course irrespective of the success or failure in the examination. If he leaves the college with success, the discharge is positive. Otherwise, it is negative).

Modes of Discharge:-- Following are the different modes, by which a contract may be discharged:

1. By Performance of Contractual Obligation.
2. By Impossibility of Performance (Doctrine of Frustration).
3. By Subsequent Agreement (Doctrine of Novation).
4. By Breach of Contract.
5. By Lapse of Time; and
6. By Operation of Law.

The lecture cover the following heads -

1. Discharge by performance of contractual obligation.
   - A) Tender or Offer of Performance.
   - B) Performance by Joint Promisors.
     (Devolution of Joint Liabilities (Ss. 42-44)
   - C) Appropriation of Payments (Ss. 59-61)
     (The Rule in Clayton's Case)
2. Discharge by Impossibility of Performance
   (The Doctrine of Frustration (Sec. 56).

4. If there are more than one promises, it may be made to one of them (i.e. to one of the joint promises), and
5. If the contract is for delivery of goods, the promisee must be given an opportunity to ascertain that the goods are according to the contract.

Effect of Valid Tender:-- The effect of valid tender is, it discharges the contract. If the other party (promisee) has not accepted the tender of performance, the promisor (offeror) need not perform his part under the contract and can also claim damages.

Reciprocal Promise:-- Sections 51 to 54 deal with Reciprocal Promises. It means "mutual promise between the offeror and offeree". When one party makes a promise in consideration of the promise made by the other party, the promises are called "Reciprocal Promises".

Eg. 'A' offers to sell his house for Rs. 75,000/- and 'B' accepts the same. It becomes a reciprocal promise if 'A' is a promisor to give the house and a promisee to receive Rs. 75,000. Similarly, 'B' is the promisor to give Rs. 75,000/- and the promisee to receive the same.

(B) Performance by Joint Promisors (Devolution of Joint Liabilities (Ss. 42-44)

Sections 42 to 45 of the Indian Contract Act, 1872 deal with the rights and liabilities of Joint Promisors. When two or more persons jointly have made a promise, all of them are jointly and severally liable to perform the promise unless a contrary intention appears in the contract. The persons are called 'Joint Promisors'. Their liability is joint and several. The liability is joint in the sense, all of them are jointly liable. The liability is several in the sense, each one of them is individually liable. According to Sec. 42, if any one of them dies, his legal representative must join the surviving Joint Promisors to perform the promise or to meet the liability. In case, all the joint promisors die, their legal representatives have to perform the promise. (In Law of Contracts, when two

3. Discharge by Subsequent Agreement.

   A) Novation
      (The Doctrine of Novation - Sec. 62)
   B) Discharge by Remission.
   C) Accord and Satisfaction.

4. Discharge by Breach of Contract.

   Kinds of Breach of Contract.
      1. Anticipatory Breach
      2. Present Breach or During Performance.

5. Discharge by Lapse of Time.

6. Discharge by Operation of Law.

1. Discharge by performance of contractual obligations:- A contract is said to be discharged, if the parties had fulfilled their respective obligations under the contract.

Eg. 'A' offers to sell his house to 'B' for Rs. 50,000/- and 'B' accepts the same. Later, 'B' paid the amount in full and 'A' handed over the house to 'B'. Here, the parties have fulfilled their obligations. The contract is said to be discharged by performance.

The starting point of the performance of a contract is called "Tender or Offer of Performance".

(A) Tender or Offer of Performance

It means "Offer made by the promisor (offeror) to promisee (offeree) expressing his willingness to perform his part of the obligation under the contract. It is also known as "attempted performance".

Essential Elements:-- To constitute a valid Tender, the following elements are to be satisfied:

1. The tender must be unconditional.
2. It must be made to the promisee or his authorised agent.
3. It must be made at proper time and proper place.

4. If there are more than one promises, it may be made to one of them (i.e. to one of the joint promises), and
5. If the contract is for delivery of goods, the promisee must be given an opportunity to ascertain that the goods are according to the contract.

Effect of Valid Tender:-- The effect of valid tender is, it discharges the contract. If the other party (promisee) has not accepted the tender of performance, the promisor (offeror) need not perform his part under the contract and can also claim damages.

Reciprocal Promise:-- Sections 51 to 54 deal with Reciprocal Promises. It means "mutual promise between the offeror and offeree". When one party makes a promise in consideration of the promise made by the other party, the promises are called "Reciprocal Promises".

Eg. 'A' offers to sell his house for Rs. 75,000/- and 'B' accepts the same. It becomes a reciprocal promise if 'A' is a promisor to give the house and a promisee to receive Rs. 75,000. Similarly, 'B' is the promisor to give Rs. 75,000/- and the promisee to receive the same.

(B) Performance by Joint Promisors (Devolution of Joint Liabilities (Ss. 42-44)

Sections 42 to 45 of the Indian Contract Act, 1872 deal with the rights and liabilities of Joint Promisors. When two or more persons jointly have made a promise, all of them are jointly and severally liable to perform the promise unless a contrary intention appears in the contract. The persons are called 'Joint Promisors'. Their liability is joint and several. The liability is joint in the sense, all of them are jointly liable. The liability is several in the sense, each one of them is individually liable. According to Sec. 42, if any one of them dies, his legal representative must join the surviving Joint Promisors to perform the promise or to meet the liability. In case, all the joint promisors die, their legal representatives have to perform the promise. (In Law of Contracts, when two

or more persons jointly promise to perform an act/obligation, they are called 'Joint Promisors'. In Law of Torts, when two or more persons jointly commit a tort, they are called 'Joint Tort-Feasors'. In both the Law of Contracts and the Law of Torts, the liability is joint and several. In Criminal Law, when two or more persons jointly commit a crime, their liability is joint and constructive i.e. not several/not appropriationed among them. For instance, if the joint criminals are found guilty of murder all of them are sentenced to life imprisonment or death sentence under Sec. 302 read with Sec. 34 I.P.C.).

Rules relating to Devolution of Joint Liabilities

1. Devolution of Joint Liabilities (Sec. 42):-- Section 42 deals with devolution of joint liabilities. Where several persons make a joint promise and borrow a certain sum of money from X, then all such persons are jointly liable to X during their lives. But if one of several joint promisors dies, then the legal representatives of the deceased promisor jointly with the surviving promisors are liable to pay X. This is an Indian Law.

The English Law is that upon the death of one of several joint promisors the legal liability under the contract devolves on the surviving promisors, and the representatives of the deceased cannot be sued at law either alone or jointly with the surviving promisors. Consequently, the whole liability ultimately devolves upon the last surviving promisor and after his death upon his representatives.

Section 42 runs as follows -

"When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

2. The Promisee may compel one or more (Sec. 43, Para 1):-- Section 43 says that "any one of the joint promisors may be compelled to perform". Section 43 runs as follows -

"When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise."

Each promisor may compel contribution.- Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution.- If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Explanation.- Nothing in this section shall prevent a surety from recovering, from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Illustrations

(a) A, B and C jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(b) A, B and C jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1,250 rupees from B.

(c) A, B and C are under a joint promise to pay D 3,000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(d) A, B and C are under a joint promise to pay D 3,000 rupees; A and B being only sureties for C. C fails to pay. A and

B are compelled to pay the whole sum. They are entitled to recover it from C.

When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel anyone or more of such joint promisors, to perform the whole of the promise. The responsibility, according to the Indian Law, is joint as well as several. In simple words, in a joint promise the promisee has an option to enforce the promise against one or more leaving the other promisor/promisors, since the liability is joint and several.

Eg. 'A', 'B' and 'C' jointly promise to pay Rs. 30,000/- to 'D'. then 'D' has an option to compel 'A' alone leaving 'B' and 'C' to perform the promise. Or 'D' may compel 'A' and 'B' to perform the promise leaving 'C'. (If 'D' sues 'A', 'B' and 'C' jointly, the liability of 'A', 'B' and 'C' is joint. If 'D' sues 'A' or 'B' or 'C' alone, the liability of 'A' or 'B' or 'C' is several. If 'A', 'B' and 'C' are jointly sued, they have to pay Rs. 10,000/- each. If 'A' alone is sued, he has to pay Rs.30,000/-).

3. Contribution between/among joint promisors: (Sec. 43, Para 2):-- Where one promisor alone has performed the promise (to meet the liability) he has a right to claim/recover equal/ proportionate contribution from the other joint promisor/promisors.

Eg. In the above example, if 'A' alone has paid Rs.30,000/- he can recover Rs.10,000/- each from 'B' and 'C'.

4. If one of them is defaulter (Sec. 43, para 3):-- Where one of the joint promisors makes default as he was unable to meet the liability, his share of liability is to be borne by the remaining joint promisors.

Eg. In the above example, if 'C' makes default, 'A' and 'B' have to share the liability @ Rs.5,000/- each.

Position in England:-- In England, the liability of joint promisors is only joint, not several.

5. Release of Joint Promisor (Sec. 44):-- If the promisee releases any one of the joint promisors from liability, it does not discharge the other joint promisors from liability. The released joint promisor also continues to be liable to the other joint promisors.

Position in England:-- In England, the release of a joint promisor by the promise releases other promisors. The reason is the liability is joint, not joint and several.

(C) Appropriation of Payments (Ss. 59-61) (The Rule in *Clayton's Case*)

Sections 59 to 61 of the Indian Contract Act, 1872 lay down the rules relating to appropriation of payments. Appropriation means 'adjusting the payment towards the debts'. When a debtor owes several distinct debts to a creditor and makes a payment not sufficient to clear/discharge all the debts, the question that arises is, against which debt/debts, the payment is to be adjusted/ appropriated? To answer this question, four rules were laid down in the *Clayton's Case.* Hence, it came to be known as **'The Rule in *Clayton's Case'*.**

The above rules are enshrined/embodied in Sections 59 to 61 of the Indian Contract Act, as follows:

1. When the debtor intimates creditor as to appropriation (Sec. 59):-- Section 59 deals with application of payment where debt to be discharged is indicated. Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying, that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

In this case, the creditor has to appropriate the payment against the debt debts as required/directed by the debtor.

Eg. 'A' owes to 'B' Rs.5,000/-, 8,000/- and 3,000/- on different debts/occasions. Later, 'A' sends Rs. 3,000/- asking 'B' to adjust it against the 3rd debt. 'B' is bound to do so.

2. Implied appropriation (Sec. 59):-- Sometimes, the debtor does not indicate as to appropriation, the circumstance so implies that the payment is to be appropriated against a particular debt.

Eg. In the above example if 'B' sends Rs.8,000/- to clear off a debt in full, it is to be appropriated against the second debt. Or if one of the above debts is about to expire by limitation, 'B' sends payment on or before the date of expiry, that debt has to be appropriated.

Illustrations :

(a) A owes B, among other debts, 1,000 rupees upon a promisory note, which falls due on the first June. He owes B no other debt of that amount. On the first June A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(b) A owes B, among other debts, the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

3. Where the debt to be discharged is not indicated (Section 60): Section 60 deals with "application of payment where debt to be discharged is not indicated". Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits. In this case, the creditor has a discretion to adjust/appropriate the payment against any debt including time barred, but not disputed one.

4. Where neither party appropriates (Section 61): According to Sec. 61, "Where neither of the parties appropriates, the payment shall be applied to discharge the debts including time barred ones in a chronological order i.e. in order of time. If the

debts are of equal standing, the payment shall be appropriated proportionately."

Clayton's Case: The above rules embodied in Sections 59-61 of the Indian Contract Act, 1872 were formulated in the case of:

***Devaynes v. Noble* (1816) Mer. 529:** Hence, this case is popularly known as *Clayton's case.*

Facts:-- A firm of Bankers Devaynes, Daives, Noble & Co., had five partners. Devaynes, a senior partner died. The surviving partners continued the business. After one year, the firm became bankrupt and the creditors claimed against the estate of the deceased partner. N. Clayton, a creditor (customer) continued to deal with the firm even after the death of Devaynes. Clayton had a credit balance on the death of partner. Later, he withdrew in excess of the balance and also paid in, so as to arrive at credit balance. Mr. Clayton claimed that the payments in, should be appropriated against the withdrawals so as to leave the credit balance intact at the time of the partner's death. The Court rejected his contention and denied the claim and laid down the above rules. (So as to avoid confusion in future).

2. DISCHARGE BY IMPOSSIBILITY OF PERFORMANCE

(The Doctrine of Frustration (Section 56)

One of the essential elements of a contract is 'Possibility of Performance'. If the performance of a contract is impossible, it is void. In other words, impossibility of performance renders the contract void. Thus Section 56 of the Indian Contract Act lays down the provisions relating to the impossibility of performance, which runs as follows -

"An agreement to do an act impossible in itself is void".

Contract to do act afterwards becoming impossible or unlawful:-- A contract to do an act which, after the contract is

made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful:-- Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Illustrations

(a) A agrees with B to discover treasure by magic. The agreement is void.

(b) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

(c) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practice polygamy. A must make compensation to B for the loss caused to her by the non-performance of his promise.

(d) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

(e) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occassions A is too ill to act. The contract to act on those occassions becomes void.

In English Law, impossibility of performance is known as "The Doctrine of Frustration". It is based on the following two maxims namely:

(i) *lex non cogit and impossibilia.* It means 'Law does not recognise, what is impossible; and

(ii) *impossibilium mulla obligatio est.* It means 'what is impossible does not create an obligation'.

The Doctrine of Frustration : Origin and development:- In England, before 1863, subsequent impossibility of performance was not a defence. It was laid down in -

***Paradine v. Jane,* 1647 (82) ER 897: 1647 Aleyn 26:-** In this case Paradine sued for rent due from his tenant Jane. The defendant pleaded that a German Prince had invaded the realm and occupied the property and that no profits could be derived from the property for the payment of rent. It was held that this was not a valid defence. The obligation to pay rent was expressed in absolute terms and so, even *vis major* of the kind pleaded by the defendant could not absolve the defendant from liability.

The above principle was overruled and the doctrine of frustration was evolved/coined in -

***Taylor v. Caldwell,* 1863 (122) ER 309 : 1863 (3) B&S 826:--** In this case, the subject matter of the contract was a music hall. The defendant agreed to let out the music hall to the plaintiff on specified dates for the purpose of entertainment. The hall was destroyed by fire prior to those dates. The plaintiff, however, sued for damages for breach of the contract. The defendant pleaded that the supervening impossibility discharged him from the contract. This defence was successful and the suit was dismissed.

This doctrine was embodied in para 2 of Sec. 56.

In certain circumstances the parties to a contract are discharged from performance of the obligations when there is a supervening impossibility. The contract is then said to be frustrated. Even where performance may not have become physically impossible, when there is a fundamental change in the situation, the doctrine of frustration may be invoked.

Conditions for getting relief under Section 56:-- The following conditions are essential to be established before a person can get any relief under Section 56:

(a) a valid and subsisting contract between the promisor and promisee,

(b) there must be some part of contract yet to be performed,

(c) the contract, after it is entered, becomes impossible to be performed.

According to Section 56 of the Indian Contract Act, 1872 impossibility of performance of the contract takes place under the following circumstances:

1. Impossibility existing at the time of agreement—

(a) Initial Impossibility known to the parties;

(b) Initial Impossibility unknown to the parties.

2. Impossibility after formation of the contract.

1. Impossibility existing at the time of the contract: According to Section 56, an agreement to perform an impossible act is void. Such impossibility of performance may or may not be known to the parties at the time of entering into the contract.

(i) Impossibility known to the parties: It is also known as absolute impossibility. It is void.

Eg. i) An agreement to put life into the dead body.

ii) An agreement to do an act impossible in itself is void. For example, A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy. The agreement by A to marry B is void. [III.(c) to Sec. 56]

(ii) Impossibility unknown to the parties: At the time of contract, the parties are ignorant as to the impossibility of performance.

Eg. 'A' enters into an agreement with 'B' to supply goods in transit. But 'A' could not supply since the goods are lost/ destroyed in the transit.

Whether the impossibility is known or unknown to the parties initially (as in the above two cases), the contract is void. Only the subsequent impossibility is a ground for the discharge of the contract.

2. Subsequent Impossibility or Impossibility after formation of the contract:-- The performance is possible at the time of entering into the contract, but later, it becomes impossible to perform the same, due to happening of an event.

Eg. 'A', in India and 'B', in Pakistan entered into a lawful contract. Later, i.e. before performance, war broke out between India and Pakistan. As a result, the parties become alien enemies. The contract cannot be performed owing to subsequent impossibility.

The subsequent impossibility of performance takes place in the following circumstances:

(i) destruction of the subject matter:-- A contract cannot be discharged, if the subject matter is destroyed.

Eg. 'A' took an advance from 'B' to supply goods in a day or two. But, the goods are lost in the transit and could not be supplied to 'B'.

(ii) by death or incapacity of either of the parties:- Incapacity as a consequence of minority or insanity or legal disqualification (Eg. insolvency) etc., renders the contract void (Sec. 11 I.C. Act). Similarly certain contracts come to an end with the death of either of the parties.

Eg. 'A' promises 'B' to make the statue of 'B's father in consideration for Rs.10,000/-. Later 'A' died (or became insane/ mad) and hence cannot make the statue).

Rabinson v. Devison: In this case, the defendant's wife, a piano player, promised to play piano at concert on an occasion.

But she could not give her performance due to ill-health. In an action by the plaintiff, the defendant was held not liable.

(iii) by an act of legislature:-- Certain acts, which are in practice may be forbidden/prohibited by the Government by passing legislation.

Eg. : The Government by passing a legislation imposed ban on alcoholic drinks. A contract, which had already been entered into for supply of arrack/wines becomes void as a consequence of the legislation.

(iv) by non-occurrence of a contemplated event:-- Where the event contemplated by both the parties, does not take place, the contract becomes void. Relevant leading case on this point is:

Kerell v. Henry (Coronation Procession' Case): The defendant agreed to hire a flat from plaintiff on 26th and 27th June 1902 for viewing the proposed coronation procession of King Edward-VII. Owing to sudden illness of the king, the procession was cancelled. In an action against the defendant for rent, it was held not actionable.

Satyanarayana Ghose v. Mugneeram Bangar & Co. **(1954):** In the instant case, the plaintiff entered into a contract with the defendant, a construction Co. for construction of a house in a plot within a stipulated period and paid some amount as an advance. But, the defendant company did not complete the construction within the stipulated time. Meanwhile, second world war broke out and the defendant's land was requisitioned by the Government. In an action by plaintiff, the defendant took the plea of frustration. The Court rejected the plea and directed the defendant to pay damages to the plaintiff (for delaying the construction).

Effect of Frustration:-- The effect of frustration is to operate as a mode of discharge of the contract. The contract is treated as void from the time when it is frustrated.

3. DISCHARGE BY SUBSEQUENT AGREEMENT

A contract may be terminated by a subsequent agreement. The new agreement may be by way of:

A) Novation; or

B) Remission; or

C) Accord and Satisfaction.

(A) NOVATION

(The Doctrine of Novation, Section 62)

Section 62 of the Indian Contract Act deals with the 'Doctrine of Novation' or the effect of novation, rescission, and alteration of contract. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Illustrations :

(a) A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b) A owes B 10,000 rupees. A enters into an agreement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.

(c) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.

The expression 'Novation' means substitution of a new contract in the place of an existing contract. With the creation of the new contract, the existing contract stands extinguished/ terminated. The new contract or novation may take place:

(i) Between the same parties with the same terms and conditions; or

(ii) Between the same parties with altered terms and conditions; or

(iii) With the change of parties with the same/old terms and conditions; or

(iv) With the change of parties and with altered terms and conditions.

The new contract in the above cases must be supported by a lawful consideration. The mutual discharge of the old contract may be treated as a consideration for the new contract. The above instances of novation may be explained in detail as follows:

(i) Same parties and same terms and conditions:-- The parties to the contract may mutually agree to enter into a new contract with the same terms and conditions in order to discharge the existing/old contract. Then old contract stands terminated and the new contract will come into force.

Eg. If a promissory note is about to expire on limitation, the parties may execute a new promissory note. Here, new contract (i.e. fresh promissory note) is created in the place of old one. However, the parties and the terms of the contract remain unchanged.

(ii) Same parties with altered terms and conditions:- The parties may enter into a new contract by changing/altering the terms and conditions of the existing/old contract.

Eg. In the above example, if the debtor, before the expiry of the promissory note, gives the creditor some gold as security, the parties remain unchanged but the terms of the contract are altered from promissory note to mortgage deed.

***Manohar Koyal v. Takur Das Naskar* (1888):--** In this case, the plaintiff lent Rs.1173/- to the defendant on a bond. After due date of the bond, the defendant agreed/accepted to pay

Rs.400/- in cash and to execute a fresh bond for Rs.700/- payable by instalments. But the defendant neither paid the cash, nor executed the bond. In an action by the plaintiff, the defendant was held liable on the ground that the original contract was not discharged by novation.

(iii) Change of Parties with the same terms and conditions:-- A new contract may be entered into with the change of parties under the same terms and conditions of the existing/ old contract in order to discharge the old contract.

Eg. 'A' offered to sell his house to 'B' for Rs.50,000/- payable in two instalments in 6 months. 'B' accepts to purchase the same. Later, 'B' with the consent of 'A' and 'C' withdraws from the contract and 'C' accepts to purchase it by entering into a new agreement with 'A'. Here, the parties are changed, but the terms and conditions are the same.

(iv) Change of Parties and Change of Terms and Conditions:-- A contract between two parties may stand discharged against a new contract entered into by the change of parties with altered terms and conditions.

Eg. In the above example, if the parties ('A' and 'B') agree to discharge the old contract against a new contract of mortgage of the said house between 'A' and 'C' for Rs.30,000/-. Here, the parties are changed and the terms and conditions also are changed.

Rules of Novation:-- Novation to be valid, the following conditions are to be satisfied.

1. To substitute new contract, the old contract must exist.
2. The new contract must fulfil the essentials of a valid contract (U/s.10 of the Indian Contract Act, 1872).

Relevant Case Law:

Shankerlal Damodhar v. Ambalal Ajaidal

In the instant case, the parties entered into a new mortgage in order to discharge the existing/old mortgage. However, the new

mortgage has not been registered. It was held that the parties are binding on the old mortgage since the new mortgage is not enforceable.

(B) DISCHARGE BY REMISSION

Sec. 63 of the I.C. Act, speaks about the discharge of a contract by remission. It allows (liberates) a party (promisee) to the contract to dispense with the performance of the obligation of the other (promisor). The dispention may be whole or partial. For instance, 'A' borrowed Rs.50,000/- from 'B' for an interest at the rate of 18% per annum and executed a promissory note. Later, 'B' in a letter to 'A' stated that he (A) need not pay any amount towards the interest. Here,'B's act is called 'remission'.

(C) ACCORD AND SATISFACTION

Accord means promise or undertaking to accept less than what is due under the contract. Satisfaction means actual payment or performance of the lesser obligation. Thus, accord, followed by satisfaction discharges the contract.

Eg. 'A' owes Rs.10,000/- to 'B' agrees to accept Rs.7,500/- in full satisfaction of his claim (or in full settlement of the debt) of Rs.10,000/- it is called accord. If 'A' pays Rs.7,500/- and the same is accepted by 'B', it is called satisfaction. Therefore, accord and satisfaction discharges the contract. (We witness the instances of accord and satisfaction, where the creditors find it difficult to recover the amount, request the debtors to pay the part of the debt in full satisfaction (settlement) of his claim and the debtor pays accordingly).

4. DISCHARGE BY BREACH OF CONTRACT

Breach of contract means failure to perform the contractual obligation by either of the parties without any lawful excuse. It is a ground for discharge of the contract.

Eg. 'A' enters into a contract with 'B', offering to sell his house for Rs.50,000/- and 'B' accepts to purchase the same.

Here, the parties have contractual obligations. 'A' has an obligation to sell or deliver the house for sale price of Rs.50,000/-. Similarly, 'B' has an obligation to pay the price. If either of the parties ('A' or 'B') fails to perform the contractual obligation, it amounts to breach of contract.

Kinds of Breach of Contract

It may be classified under the following heads:

1. Anticipatory Breach; and
2. Present Breach or During Performance.

1. Anticipatory Breach:-- As noted above, anticipatory breach of contract means the repudiation of a contract by one party to it before the due date of its performance has arrived. Section 39, which contains law relating to anticipatory breach of contract, reads as under :

"When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance."

In this case, one party (either of the parties) expresses his inability to perform his part before the due date of its performance. In the above example if the parties (A and B) agreed to perform the contract on or before 1-10-2000. But, on 1-9-2000, 'B' expressed his intention to repudiate the contract as he had no money to purchase the house.

West Bengal Financial Corporation v. Gluco Serires, **AIR 1973 Cal. 268:--** In this case A granted a loan to B amounting to Rs.4,38,000 and also agreed to grant a further loan of Rs. 1,62,000 at its discretion, provided that B made the repayment of the loan in accordance with the agreement at the rate of Rs. 60,000/- every year. B failed to make the repayment as agreed. B insisted that A should grant further loan of Rs. 1,62,000 to him, but A did not grant further loan because B did not make the

repayment of loan as agreed. B's contention was that A had failed to perform the contract by not advancing further loan, which should be considered to be breach of contract. It was, however, held that A had already advanced some loan, which B had accepted, there cannot be said to be a refusal on A's part to the performance of the contract in its entirety. B was therefore not entitled to put an end to the contract on the ground of breach of contract on the part of A.

2. Present Breach or During Performance:-- It is simply, a breach of contract or actual breach. If one of the parties to a contract refuses to perform his part of the contract during performance, the other party is discharged from any further performance of his obligations under the contract and may also bring an action for the breach. It takes place either at the time, when the performance of the contract falls due or during the performance of the contract.

5. DISCHARGE BY LAPSE OF TIME

The Limitation Act, 1963, imposed an obligation on the parties in respect of certain contracts to perform within a specified period.

Eg. 'A' lends 'B' Rs.10.000/- against promissory note. If 'B' fails to repay, 'A' has to enforce within 3 years i.e. within the period of limitation. If 'A' sues 'B' after 3 years, it is not enforceable.

6. DISCHARGE BY OPERATION OF LAW

A contract may be discharged by operation of law in case of death or insolvency, unauthorised alteration of terms of the contract etc. Following are the notable forms of discharge -

i) Merger

ii) Judgement of Court

iii) Alteration or cancellation of the written instrument and

iv) Insolvency/Bankruptcy.

i) Merger:-- If in the place of a lower security, a higher security is accepted, the lower security will be deemed to be merged in the higher security and the party concerned shall be discharged from its obligations in respect of the lower security. It may, however, be noted that this rule will apply only in the absence of a contrary intention of the parties to the same effect.

ii) Judgement of Court:-- A contract may also be discharged by the judgement of a court of competent and appropriate jurisdiction in favour of the plaintiff.

iii) Alteration or cancellation of the written instrument:- A contract may also be discharged by alteration or cancellation of a written instrument. It may, however, be noted that alterations here is different than provided under Section 62 of the Contract Act. In Section 62, the alteration is made with the consent of the parties so as to discharge them. But alteration here is unauthorised alteration such as addition or erasure of the contract in writing. If a party erases or alters the written instrument, the other party is discharged from its obligations under the contract.

iv) Insolvency/Bankruptcy:-- When a person is adjudged a bankrupt by the court, he is thereby discharged from his debts and other obligations. Thus bankruptcy may also operate to discharge the obligations of a party to a contract.

Questions and How to Answer

(Q) What do you understand by performance of a Contract? (A.U., July 2000, Part-B, Q.3).

Ans. Performance is one of the modes, by which a contract is discharged. (Now, write in detail about performance of a contract).

(Q) Critically examine the Rule in *Clayton's Case?* 'OR' Explain the provisions relating to appropriation of payments under Indian Contract Act?

Ans. The rule in *Clayton's Case* refers to 'Appropriation of Payments'. (Now write about Appropriation of Payments).

(Q) Examine the grounds of Impossibility of performance of Contract? (N.U., April 1999, Part-B, Q.13).

Ans. Write in detail about the Doctrine of Frustration.

(Q) Examine the scope of Doctrine of Frustration? (A.U., Sept. 99, Part-A, Q.10).

Ans. Write in brief about the Doctrine of Frustration.

(Q) Novation (S.V.U. November, 1999, Part-A, Q.7).

(Q) Explain breach of contract? (A.U., July, 2000, Part-A, Q.6).

Problem: Sridhar agreed to sell to Raju, the entire crop of apples growing in his orchard. After the agreement was made, a sudden frost destroyed the crop. Sridhar claimed that the contract was discharged because of impossibility of performance. Advise Raju.

Ans. Instant problem relates to 'Impossibility of Performance or the Doctrine of Frustration' as explained under Sec. 56 of the Indian Contract Act, 1872. (Now, write about the doctrine of frustration in detail with relevant case law).

In view of the above, the contract is discharged due to subsequent impossibility of performance. Hence, Raju can neither enforce the contract nor can claim the damages.

LECTURE-X

QUASI-CONTRACTS

Chapter V containing sections 68 to 72 of the Indian Contract Act, 1872 lays down the provisions relating to "Quasi Contracts" or "Certain relations resembling those created by contracts".

This lecture covers -

1. Quasi Contract : Meaning and Definition
2. Kinds of Quasi Contracts (Ss. 68-72)
   i) Supply of Necessaries to a person not competent to contract (minor) (Sec.68);
   ii) Payment by an Interested Person (Sec.69);
   iii) Non-Gratuitous Acts (Sec.70);
   iv) Responsibility of Finder of Lost Goods (Sec.71); and
   v) Payment by Mistake or Coercion (Sec.72).

1. QUASI CONTRACT : MEANING AND DEFINITION

The term *'Quasi'* is a Latin word, which means "as if" or "Similarly". It means seemingly, apparently, but not really. The expression 'quasi contract' is derived from the Roman Law "*Obligatio quasi ex contractu*". Quasi contract is not a real contract entered into by parties intentionally. *It resembles a contract, in which law imposes an obligation on a person to perform an obligation on the ground of equity.*

Underlying Principles: *Quasi* contract is based on the principle of equity that "*A person shall not be allowed to enrich himself unjustly at the expense of another*". In other words, a person should not receive or accept any benefit unjustly. If so, he has an obligation to give it back to the right owner. Such obligation is called *Quasi*-contractual obligation.

Eg. 'A' leaves his handbag at 'B's house by mistake. 'B' has *quasi*-contractual obligation to return it to 'A'.

As stated above, an obligation is not created in *quasi* contract by entering into an agreement. The law creates such obligation on the ground of Natural Justice.

It is to be noted that, in a contract, obligations are created on the parties out of an agreement, whereas in a *quasi* contract, obligations are created on the parties *without* any agreement.

Definition:-- Dr. Jenks defined *'Quasi* Contract', as "a situation, in which law imposes on one person on the ground of natural justice, an obligation similar to that, which arises from a true contract although no contract, express or implied has in fact been entered into by them".

Salmond defines *quasi* contracts as "There are certain obligations which are not in truth contractual in the sense of resting on agreement, but which the law treats as if they were."

Lord Mansfield explained such obligations on the principle that law as well as justice should try to prevent 'Unjust Enrichment', i.e. enrichment of one person at the cost of another.

Lord Mansfield's theory of Unjust Enrichment explains : "It is clear that any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep. Such remedies in English Law are generally different from remedies in contract or tort, and are now recognised to fall within a third category of the common law which has been called quasi-contract or restitution."

Sometimes, Law, in the absence of a contract, but on the principle of equity, imposes an obligation on a person. Such obligation is called *'Quasi* contractual obligation'. It is similar to a real contract entered into between the parties.

Distinctive Features:-- Anson, in his Law of Contract (23rd Edn. p.11) stated that 'quasi contract is not a happy term' and pointed out the following distinctive features of the quasi contract-

i) Right to a sum of money
ii) Imposed by Law and does not arise by agreement of parties
iii) Right available only against a particular person or persons

i) Right to a sum of money:-- ".....Such a right is always a right to money, and generally, though not always to a liquidated sum of money."

ii) Imposed by Law and does not arise by agreement of parties:-- ".....It does not arise from any agreement of the parties concerned, but is imposed by the law, so that in this respect a quasi-contract resembles a tort."

iii) Right available only against a particular person or persons:-- ".....It is a right which is available not, like the rights protected by the law of torts, against all the world, but against a particular person, persons only, so that in this respect, it resembles a contractual right."

2. KINDS OF *QUASI* CONTRACTS
(Sections 68 to 72)

Sections 68 to 72 of the Indian Contract Act, 1872, deal with five kinds of *Quasi*-contracts as follows:

i) Supply of Necessaries to a person not competent to contract (minor) (Sec.68);
ii) Payment by an Interested Person (Sec.69);
iii) Non-Gratuitous Acts (Sec.70);
iv) Responsibility of Finder of Lost Goods (Sec.71); and
v) Payment by Mistake or Coercion (Sec.72).

i) Supply of Necessaries to a person not competent to contract (minor) (Sec.68):-- Section 68 deals with the claim for necessaries supplied to a person incapable of contracting, or on his account. It runs as follows -

"If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another

person with necessaries suited to his condition in life, the person who has furnished such supplied is entitled to be reimbursed from the property of such incapable person.

Illustrations :

(a) A supplied B, a lunatic, with necessaries suitable to his conditions in life. A is entitled to be reimbursed from B's property.

(b) A supplied the wife and children of B, a lunatic, with necessaries suitable to their conditions in life. A is entitled to be reimbursed from B's property.

Generally, a minor is not liable under the contract on the ground that he can be a promisee but not a promisor. However, a minor is held liable for necessaries supplied to him or to his dependants, on the principle of natural justice. In such a case, minor's obligation to pay for necessaries is a *quasi* contractual obligation.

Thus, a minor is liable for the price of necessaries supplied to him and his dependants viz. father, mother, brother, sister etc. However, the liability is restricted only to his property and he has no personal liability. In other words, a minor is not liable even for necessaries supplied to him, if he has no property at all. But in English Law, he is personally liable for necessaries supplied, if he has no property. Now, the question is, what are necessaries?

Necessaries:-- There is no definition for the term 'necessaries'. "Things necessary are those without which an individual cannot reasonably exist." The word 'Necessaries' has been used here in a technical sense. Generally, it means "*goods and services, which are most essential for the survival of human life*". It includes food, clothing, shelter, education, medical and legal aid etc. Expenses for minor's education, his sister's marriage, expenses incurred in funeral of minor's parents, expenses incurred for necessary litigation, etc. have generally been held as necessaries. Expenses for minor's marriage have also been held

to be 'necessaries'. It also varies from person to person subject to his social status and family background. What is luxury to one person, may be a necessity to another.

Eg. Car is a luxury to one person and it may be a necessity to another, who hails from a rich/royal family. Further, apprenticeship contracts come under the head, 'necessaries'.

Essential Elements:-- To constitute Sec. 68 the following essential elements are to be satisfied.

i) If a person supplies necessaries to a person who is incapable of contracting or to any one whom he is legally bound to support;

ii) the necessaries must be suited to his condition in life;

iii) the person supplying the necessaries is entitled to be reimbursed; but

iv) the liability of such person incapable of contracting is limited to his property or in other words he incurs no personal liability for the obvious reason that he is incompetent to contract.

Relevant Case Law:

1. ***Kunwarlal v. Surajmal,*** **AIR 1963, MP 58:--** In this case, the house given to a minor on rent for living and studies was held to be the supply of necessaries and was recoverable.

2. ***Chapple v. Cooper,*** **(1844) 13 M & W, 252:--** It was held that an infant (minor) widow is bound by a contract for the burial of her husband as the contract is for a necessary.

3. ***Kedarnath v. Ajundhia:--*** In this case, money given to the minor for marriage expenses was held to be necessary and was recoverable.

4. ***Nash v. Imman,*** **(1908) 2 K.B.I:--** In this case, the defendant was a minor. He was already having sufficient supply of clothing suitable to his position. He was supplied further clothing

by the plaintiff, a tailor. In an action by the plaintiff for the price, it was held that the price of the clothes so supplied could not be recovered.

ii) Reimbursement of money paid, due by another (Payment by an interested person: Sec.69):-- If a person makes any payment out of common interest which another ought to pay. In such case, the person on whose behalf the payment had been made has a *quasi*-contractual obligation to repay the same. For example, if a tenant pays house tax to stop eviction, he can recover the amount from the owner. In other words, the house owner has a *quasi* contractual obligation to repay/ reimburse the amount to the tenant.

Section 69 of the Indian Contract Act, 1872 deals with reimbursement of person paying money due by another, in payment of which he is interested. A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Illustration :

B holds land in Bengal, on a lease granted by A, the Zamindar. The revenue payable by A to the Government being in arrears, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

The section lays down that where one person 'is bound by law to pay' money and another being 'interested in the payment', actually makes the payment, the law imposes an obligation on the former to reimburse the latter.

Essentials: For application of Sec.69, the following conditions are to be satisfied:

i) One person is interested in the payment of money, and therefore, he pays it, while

ii) another person is bound by law to pay the same, but he fails to pay.

The person so making the payment is entitled to be reimbursed by the person, who was bound to pay.

Relevant case law:

***Brook's Wharf v. Goodman Brothers*, (1937) 1 K.B. 534:** The plaintiffs in the instant case were warehousemen. The defendants warehoused their goods imported from Russia with the plaintiffs. Under the law, customs duty on the goods was to be paid by the owners of the goods or by the warehousemen. The plaintiff paid the customs duty, which the defendants are bound to pay. In an action against the defendants, it was held that the plaintiffs were entitled to recover the amount.

***Govindram v. State of Gondal*, 1950 (77) IA 156 : AIR 1950 PC 99:--** In this case the defendant agreed to sell a Mill to A who agreed to sell the Mill to plaintiff. The defendant as owner was bound to pay the Municipal taxes due on the mill and these arrears amount to Rs. 1,00,000/-. The defendant defaulted and so the second plaintiff paid to avoid litigation with the Municipality. Plaintiff 2 sued the defendant for recovery of this amount under Sec. 69.

***Macclesfield Corporation v. Great Central Railway*, 1911 (2) KB 528:--** In this case, the defendants were owners of a canal and were under statutory duty to keep the bridge in repair. When the bridge fell into disrepair, the plaintiffs, the highway authority repaired it and brought the action for repayment. It was held that the plaintiffs were mere volunteers and were not entitled to succeed in the action.

iii) Non-Gratuitous Acts (Sec.70):-- Section 70 of the Indian Contract Act, 1872 deals with "obligation of a person enjoying benefit of non-gratuitous act. The term 'gratuitous' means "done or given for nothing". Non-gratuitous act means "an act or service done with the expectation of something in return".

When a person delivers something to another, not intending to do so, gratuitously, then the person receiving the benefit is bound to compensate it. **Eg.** 'A' delivers some goods in 'B's house thinking that it is 'C's house. Here 'B' has a *quasi*-contractual obligation to return the goods. Similarly, 'A', a tradesman leaves goods at 'B's house by mistake, 'B' treats the goods as his own. 'B' is bound to pay 'A' for them.

According to Sec. 70 of the Indian Contract Act,1872, "Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the later is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Illustration :

(a) A, a tradesman leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(b) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

Section 70 corresponds to what in England are called actions for Quantum Meruit (as much as he deserves). Though there is no contract as such or the contract is invalid, when a person has enjoyed a benefit as a result of what another has done, he should compensate for such benefit. If that other had intended to act gratuitously, i.e. acted without any intention to create an obligation he cannot claim compensation.

Relevant Case Law:

***Damodara Mudaliar v. Secretary of State for India*: ILR (1895) 18 Mad. 88:--** The plaintiff in the instant case was the Government and the Zamindars were the defendants. The plaintiffs (Govt.) had undertaken the repair of a tank, which irrigated the

lands belonging to the plaintiff and also the defendants. The plaintiffs did not carry out the repairs gratuitously. The defendants had the knowledge of the repairs and the consequential benefit enjoyed by them. In an action against the defendants, it was held that the plaintiffs (Govt.) were entitled to recover the proportionate cost of the repairs.

***K.S. Satyanarayana v. V.K. Narayana Rao*, AIR 1999 SC 2544, 2546 (DB): (1999) 6 SCC 104 : 1999 (6) Supreme 227 : 1999 (4) Scale 286:--** In this case, it was held that where the defendant owner of a property having authorised another to enter into a sale agreement and also receiving a part of the sale consideration from such other person from the plaintiff purchaser cannot plead absence of privity of contract between himself and the plaintiff as the doctrine of unjust enrichment squarely applies requiring him to restore the unjust benefit received.

***Municipal Committee, Pundri v. Bajrang Rao Nagrath*, AIR 2006 P & H 142:--** In this case, a contractor not intending to act gratuitously carried out work on the oral request of the Municipal Councilor under the administrative approval of the Deputy Commissioner, the Municipal Committee being the beneficiary of the work, cannot disown payment and the plaintiff is entitled to recover his dues for the work done by him.

iv) Responsibility of Finder of Lost Goods (Sec.71): Section 71 of the I.C. Act, contemplates another *quasi*-contractual situation. When a person finds some goods belonging to another, he is called 'Finder of lost goods'. He has a *quasi* contractual obligation to return them to the true owner. He is subject to the same responsibility as a bailee.

Section 71 deals with responsibility of finder of goods. A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.

Once the finder of goods belonging to another takes the goods into his custody, he is treated under law as a bailee and Section

71 of the Act imposes upon him the same responsibility as of a bailee. Since Section 71 provides that the responsibility of a finder of goods is same as of a bailee. The duties of bailee, as provided under the different sections of the Contract Act, are as follows :

(i) Duty to take reasonable care of goods (Sec. 151)

(ii) Duty to return goods (Section 160)

(iii) To make proper use of the goods bailed (Sections 153 and 154)

(iv) Duty not to mix his own goods with the goods of the bailor (Sections 155,156 and 157)

(v) Duty not to question the title of bailor and

(vi) Duty of bailee to pay increase or profit from goods bailed (Sec. 163)

Finders Right to Sell:-- Under Section 169, the finder of the goods has the power to sell them when -

(1) The owner of the goods cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, and

(2) either the thing found is in danger of perishing or of losing the greater part of its value, or, in case the goods are not of perishable nature, but the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.

If the situation is not covered by section 169 and the finder sells the goods, he can be made liable for conversion.

Finder's Right of Lien and Compensation:-- The finder of the goods has no right to sue the owner for compensation for the trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and where the owner has offered a specific award for the return of goods

lost, the finder may sue for such reward, and may retain the goods until he receives it. Even if no specific reward has been offered, but, if after the goods are found, the owner promises to pay something to the finder for his services, the finder can enforce this promise under section 25(2). For example, A finds B's purse and gives it to him. B promises to pay A's expenses in so doing. It is a valid contract and A can recover the amount from B.

Finder is Bailee only against the True Owner:-- It may be noted that the position of the finder of goods is that of a bailee only against the true owner of the goods, and he is bound to return the goods to the owner as owner's title is better than his. Finder's title is better than everybody except the true owner. Thus, if the finder of a jewel gives the jewel to a jeweller for being valued, he has a right to recover its value from the jeweller, if the latter, refuses to return the same.

The finder of lost goods has to make necessary efforts to find out the real owner. He can dispose of the goods under the following cases:

i) If the goods are of perishable nature.

ii) He can sell them and pay the amount to the real owner after deducting the lawful charges.

iii) If the real owner refused to pay the lawful charges and expenses incurred for the storage etc., the finder can detain them, since he exercises particular lien over them. ('Lien' means "right to retain the goods or securities till the debt is cleared. 'Particular lien' means such right over a particular thing).

Finally, it is to be noted that section 71 of the Indian Contract Act, 1872 imposes civil liability on the finder of goods. Similarly, section 403 of the Indian Penal Code, 1860 imposes criminal liability for dishonest misappropriation of property.

v) Payment by mistake or under coercion (Sec.72):- Section 72 of the I.C. Act, deals with the liability of a person

getting benefit under mistake or coercion. When a person receives any money or goods by mistake or under coercion, he must repay or return it.

Coercion is a process, by which consent is obtained by threatening to commit an act punishable under the Indian Penal Code, 1860. In simple, it means "making a person to give his consent by force or threat".

Section 15 of the Indian Contract Act, 1872 defines coercion as "the committing or threatening to commit, any act forbidden by the I.P.C. or the unlawful detaining, or threatening to detain, any property to the prejudice of any person whatever with the intention of causing any person to enter into an agreement".

The threat amounting to the coercion need not necessarily proceed from a party to the contract. It may proceed from a third party or stranger to the contract.

Section 72 of the Indian Contract Act, 1872 deals with liability of person to whom money is paid, or thing delivered by mistake or under coercion. A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

Illustrations :

(a) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(b) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

Section 72 is based on the principle "action for money had and received" in England. The purpose of section 72 is being to prevent unjust enrichment; it is based upon equitable principle that no person shall enrich himself at the expense of another.

Relevant Case Law:

1. ***Kanhaiya Lal v. Sales Tax Officer, Banaras:***-- In this case, the plaintiff paid Sales Tax to the Government for forwarding the transaction. Later, the High Court declared such tax as invalid. In an action by the plaintiff, the Court held that the plaintiff was entitled to get back the amount.

2. ***Porcelain Electrical Mfg. Co. v. Collector of Central Excise, New Delhi*** **(SC 1998 (9) SCC 637):--** Porcelain Elec. Mfg. Co., the appellants in the instant case, paid Central Excise duty for the goods manufactured by them. A few years later, the Supreme Court, in another case declared that Central Excise duty in respect of the said products should not be levied. In an action by the appellants, the Supreme Court held that the appellants were entitled to the refund of the central excise duty.

3. ***Ameen Trading Co. v. Bank of Baroda,*** **1994(1) Civil LJ 886, 888:--** In this case, an amount of Rs. 50,000/- by mistake credited to the defendant partnership firm by the plaintiff bank. It was held that the defendant cannot unjustly enrich on account of wrong entry made in the Bank account and is liable to repay.

4. ***Indian Bank v. Mocro Electronics,*** **AIR 2005 AP 328:-** In this case the staff of plaintiff bank wrongfully credited the money into the account of the defendant and the defendant withdrawn that money on different dates without informing the bank, the defendant is under liability to refund the money together with interest at the rate of 6 % from the date of instituting the suit.

5. ***Maharashtra Distilleries v. Municipal Corporation, Aurangabad,*** **AIR 2005 SC 760:--** In this case, Maharashtra Distilleries contended that it paid excess octroi duty to Municipal Corporation, Aurangabad, for importing rectified spirit and also submitted documentary proof to prove that it has not passed on the additional octroi duty to its customers, which was not disputed by the Municipal Corporation, the claim of the respondent Municipal Corporation for the refund of excess amount collected by it, would amount to unjust enrichment and cannot be accepted.

Questions and How to Answer

(Q) *Quasi* Contract is not a contract at all. It is an obligation, which the law operates - Discuss.

Ans. The statement '*Quasi* Contract is not a contract at all. It is an obligation, which the law operates' is absolutely true/ correct. The reason is *quasi* contract is not a contract in reality. But it resembles or looks like (appears as) a contract. Any contract in reality is supported by an agreement, which imposes obligations on the parties. But, in *quasi*-contract, there would be no such agreement. However, the law imposes obligations on the parties on the principle of equity.

For better clarification of the instant statement, the concept (quasi contract) is explained below:

Write now, meaning, definition and kinds of quasi contract.

(Q) Define Quasi Contract and give examples of Quasi Contract? (N.U., April, 1999, Part-A, Q.7).

Ans. Write the meaning, definition and kinds of quasi-contracts in brief.

(Q) Explain the judicial basis of Quasi Contract and liability of the parties under Quasi Contracts? (A.U., Model Question Paper, Part-B, Q.3).

Ans. Write in detail about Quasi Contracts.

(Q) Finder of Lost Goods? (S.V.U., Nov. 99, Part-A, Q.8).

Ans. Write in brief about 'Finder of Lost Goods'.

PROBLEMS

1. 'M', a minor, who is an intermediate student of Govt. Junior College, was supplied with 10 Raymond suits. His father proved that he had provided required clothing to the minor at the time of joining him in the College. Decide. (A.U., Model Question Paper, Part-C, Q.3).

Ans. Instant problem relates to the liability of a minor in respect of necessaries supplied to him and the contractual capacity of the minor.

Sections 68 and 11 of the Indian Contract Act, 1872 deal with the liability of a minor for necessaries supplied to him and his contractual capacity respectively.

The **relevant leading case** on which the problem is framed/ formulated is:

Nash v. Inmann, (1908) 2 K.B.I.

(Write now, the liability of minor in respect of necessaries supplied to him under Sec.68, his contractual capacity under Sec.11 and facts of the above case in detail and then relevant case law, if any).

Conclusion:-- In view of the above, the Raymonds suits supplied to the minor would not come under necessaries, as he had already been provided with the required clothing by his father. Therefore, the supplier of the Raymond suits (plaintiff) cannot recover the amount from the minor.

2. 'R', a minor, representing that, he is a major, took a scooter on credit from 'S'. The scooter is not a necessity, but a luxury. 'R' did not pay the price. Can 'S' recover the scooter from 'R'? (S.V.U., Nov. 1999, Part-C, Q.14).

Ans. Instant problem relates to the liability of a minor with reference to:

1. The Doctrine of Estoppel; and

2. Necessaries/luxuries supplied to the minor.

(Write now in detail with case law on: (1) Contractual capacity of Minor with reference to the doctrine of Estoppel; and (2) The liability of Minor in respect of necessaries and luxuries supplied to him).

Conclusion:-- In view of the above discussion, 'R' being a minor is not liable, though he represented himself as a major, since the doctrine of estoppel is not applicable to the minor.

Further, a minor is liable in respect of necessaries supplied to him or his dependants, but not for luxuries. The scooter in the instant case was found to be a luxury and hence, 'S' cannot recover the scooter from 'R'.

LECTURE-XI

REMEDIES

(Remedies for Breach of Contract)

Breach of contract means "non-observance of a contractual obligation", or failure to perform the contract. Remedy means a relief or redressal to indemnify the loss or damage suffered by the other party. When either of the parties breaches the contract, it gives right to the other party to sue him for a remedy. In other words, a remedy is the means given by law for the enforcement of a right. In a breach of contract, the aggrieved party has one or more of the following remedies:

1. Rescission of the Contract.
2. Suit for Damages.
3. Suit for Quantum Meruit and
4. Suit for Specific Performance and Injunction.

1. RESCISSION OF THE CONTRACT

Where there is a breach of contract, the aggrieved party may sue or treat the contract as rescinded and refuse further performance.

Anson (in his Law of Contract, 23rd Edn. (1971) p. 505) classified the remedies for the breach of contract under the following three heads -

1. Damages
2. Quantum Meruit and
3. Specific Performance and Injunction.

An endeavour is made under Chapter XI containing sections 73 to 75 of the Indian Contract Act, 1872 to discuss the remedies available for the breach of contract.

Compensation for loss or damage caused by breach of contract (Section 73):-- When a contract has been broken, the

party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract:-- When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation:-- In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Illustrations :

(a) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(b) A hires B's ship to go to Bombay, and there takes on board, on the first of January, a cargo, which A is to provide, and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had

chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(c) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(d) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of breach of promise.

(e) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that price, starting on a specified day. The boat, owing to some unavoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(f) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conforming to the contract.

(g) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freight rises, and, on the

first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from first of January.

(h) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

(i) A delivers to B, a common carrier, a machine to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(j) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(k) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery, at the time

specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(l) A, a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down and has to be rebuilt by B, who in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

(m) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(n) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest upon the day of payment.

(o) A contracts to deliver 50 maunds of saltpetre to B on the first of January, at a certain price. B, afterwards, before the first day of January, contracts to sell the saltpetre to C at a price higher than the market price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(p) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by closing of the mill.

(q) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(r) A, a ship owner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one-half of his passage-money. The ship does not sail on the first of January, and B, after being, in consequence, detained in Calcutta for some time, and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any,

of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

Compensation for breach of contract where penalty stipulated for (Sec.74):-- When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation:-- A stipulation for increased interest from the date of default may be a stipulation by way of penalty

Exception:-- When any person enters into any bail bond, recognizance or other instrument of the same nature or, under the provisions of any law, or under the orders of the Central Government or of any State Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation:-- A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

Illustrations:

(a) A contracts with B to pay B Rs. 1,000 if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 1,000, as the court considers reasonable.

(b) A contracts with B that, if A practices as a surgeon within Calcutta, he will pay B Rupees 5,000. A practices as a surgeon in Calcutta. B is entitled to such compensation; not exceeding Rupees 5,000 as the court considers reasonable.

(c) A gives a recognizance binding him a penalty of rupees 500 to appear in court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

(d) A gives B a bond for the repayment of Rupees 1,000 with interest at 12%, at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75%, from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.

(e) A, who owes money to B, a moneylender, undertakes to repay him by delivering him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds. This is a stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach.

(f) A undertakes to repay B a loan of Rupees 1,000 by five equal monthly instalments with a stipulation that, in default, of payment of instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(g) A borrows Rupees 100 from B and gives him a bond for Rs. 200 payable by 5 yearly instalments of Rupees 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.

Party rightfully rescinding contract, entitled to compensation (Sec. 75):-- A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non fulfilment of the contract.

Illustration :

A a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully abstains herself from

the theatre, and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

2. SUIT FOR DAMAGES

Damages means compensation (in terms of money) for the loss suffered by the aggrieved party in a breach of contract. It is very important to note that the term 'damage' is different from the term 'damages'. The former (damage) denotes the loss or damage as a consequence of the breach of contract, while the latter (damages) refers to the compensation paid for the breach of a contract.

It has been rightly pointed out :

"In order to establish a right to damages, the first thing the plaintiff must show is that the loss which he has sustained was caused by the breach. But assuming this can be proved, the law will nevertheless, not compel the defendant to assume liability for the loss which the plaintiff may conceivably have suffered as a consequence of the breach. Certain losses may be too 'remote', and for this, the plaintiff is not entitled to compensation."

The first thing, therefore, that deserves consideration is the remoteness of damages and thereafter it will be desirable to discuss the measure of damages.

Fixation of Damages or Assessment of Loss:-- The quantum of damages are fixed by the Court on the basis of the proximate loss, not the loss which is too remote. The relevant leading case on this point is:

The following statement of Alderson B, in the case of *Hadley v. Baxendale,* (1854) 9 Ex. 341 is considered to be the basis of the law to determine whether the damage is the proximate or the remote consequence of the breach of contract:

"Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e., according

to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it."

The provision contained in section 73 (para 1) is similar to rule contained in the above stated judgement of *Hadley v. Baxendale*.

***Hadley v. Baxendale* (1854) 9 Ex. 341:**

Facts:-- It is a very important leading case, in which the basic principle governing the fixation of the quantum of damages was settled. In this case, the plaintiff's flour mill was stopped due to breakage of a crankshaft. The plaintiff entrusted to the defendant, a common carrier for taking it immediately to a Manufacturer at Greenwich for making a similar crankshaft. But the defendant was not told that the mill was closed for want of crankshaft. Owing to the negligence of the defendant's servant, the plaintiff could not get new crankshaft in time and sustained considerable loss of profit. The plaintiff sued the defendant for the loss of profit during the period.

Decision/Judgment:-- The House of Lords held that the defendant was not liable for the loss or profit accrued during the period of closure since the plaintiff did not disclose the defendant that the mill was closed for want of the crankshaft. If the plaintiff would have informed that the work was dislocated for want of crankshaft, the defendant could have made alternative arrangements for quick transportation of the crankshaft.

Principle laid down:-- Anderson, J., laid down in this case that the damages, which the other (aggrieved) party ought to receive in respect of breach of contract should be such as may fairly and reasonably be considered. This rule is popularly known as "The Rule in *Hadley v. Baxendale*".

The rule in *Hadley v. Baxendale* has the following two branches :

(a) The first branch deals with damages, "as may fairly and reasonably be considered either arising naturally i.e., according

to the usual course of things." For the sake of brevity we may refer it as "General Damages";

(b) The second branch deals with damages, "as may reasonably be supported to have been in contemplation of both parties, at the time they made the contract, as the probable result of the breach of it." This may be referred as "Special Damages".

Kinds of Damages

Damages may be classified under the following heads namely

1. General Damages;
2. Special Damages;
3. Nominal Damages;
4. Exemplary Damages; and
5. Liquidated Damages.

1. General Damages:-- It is also known as ordinary or substantial damages. These damages are awarded to the plaintiff for the loss actually sustained as a breach of the contract.

General damages depend "on the knowledge which the parties are presumed to possess". For example, in *Hadley v. Baxendale*, the only circumstances communicated by the plaintiffs defendants at the time of the contract were that the article to be carried was the broken shaft of a mill and that the plaintiffs were the millers of that mill. Since the defendants had only this knowledge plaintiffs were entitled to recover only the general damages from the breach of the contract.

Another leading case on the point is ***Horne v. Midland Railway Company,* 1873 LR 8 C. p. 131.** In this case, under a contract the plaintiff had to deliver military shoes in London by a particular date for French Army at very high rates. The plaintiff delivered the shoes to the defendants to be carried to London. They delayed in carriage, were rejected by the intending purchasers. The plaintiff brought action to claim the ordinary loss for the delay as well as the loss they suffered from the rejection

of the shoes by the intending purchasers. It was held that they could not recover the loss suffered by them by the rejection of the shoes. In order to recover such losses, they must prove that they had informed the defendant of the special loss which they might suffer from the delay in the delivery of the shoes.

2. Special Damages:-- Special Damages are awarded to the plaintiff in special circumstances for sustaining loss as a breach of the contract.

Special damages may be successfully claimed only when they "may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it".

***Victoria Laundry (Windsor) Ltd. v. Newman Industries Ltd,* (1949) 2 K.B. 528:--** In this case the plaintiffs were launderers and dyers and wanted to expand their business. With this aim in view, they contracted with the defendants for purchase of a new boiler. The defendant agreed to deliver the boiler on june 5 but he in fact delivered it in November. Consequently, the plaintiffs brought actions for the loss of profits which they would have earned had the boiler been delivered on June 5. Reversing the decision of the lower court, Asquith, L.J. of the Court of Appeal upheld the claim of the plaintiffs for in his view the defendants knew at the time of the contract that the plaintiffs were launderers and dyers and needed the boiler for immediate use in their business.

3. Nominal Damages:-- Nominal Damages simply means 'very small'. They are awarded on technical grounds to the plaintiff, where he has not suffered any loss.

4. Exemplary Damages:-- They are also known as 'Punitive or Vindictive or Compensatory or Retributive Damages'. These damages are awarded more than the actual loss suffered by the plaintiff. The object behind awarding the exemplary damages is to punish the defendant or to make the defendant not to repeat/ commit the similar breach in future.

Eg. Wrongful dishonour of a cheque. (The smaller the cheque dishonoured - the greater the damages awarded).

5. Liquidated Damages:-- If the amount of damages, in the event of breach is determined by parties at the time of entering into the contract, they are called 'Liquidated Damages'. **Eg.** Non-payment against promissory note.

Section 74 provides :

"When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or as the case may be, the penalty stipulated for."

Thus, "the parties to a contract may agree beforehand what sum shall be payable by way of damages in the event of breach." But the court will award damages not exceeding the sum named in the contract. It is significant to note that in such a case, the party responsible for the breach of the contract will be liable to pay the damages whether or not actual loss or damage is proved to have been caused thereby.

3. SUIT FOR QUANTUM MERUIT

The phrase *'Quantum Meruit'* means "as much as earned". A right to sue for quantum meruit arises, where one party has partly performed the contract, while the other party has terminated the contract or he could not perform due to subsequent impossibility or illegality. In such cases, the person/party who has partly performed the contract can sue the other party for reasonable remuneration for the work done. Then, the amount of quantum meruit is assessed independent of the terms of the contract.

Anson (in his Law of Contract, 23rd Edn. p. 505) has defined 'Quantum Meruit' in the following words :

"If the injured party, when the breach occurs, has already done, part, though not all, of what he was bound to do under the contract, he may be entitled to claim the value of what he has done. In that case he has to sue upon a Quantum Meruit," He, however, adds, "Quantum Meruit" is still a remedy which is alternative to rather than a form of damages.

Conditions:-- The plaintiff can institute an action for Quantum Meruit, if the following conditions are satisfied

i) It is available only, "if the original contract has been discharged."

ii) "The claim must be brought by the party not in default."

Grounds of Claim:-- The claim for quantum meruit arises in the following cases:

1. When the agreement is discovered to be void (Sec. 65).
2. Contract performed, but badly.
3. When one party refuses to perform the contract.
4. When a contract is divisible.

***Debernardy v. Harding,* (1853) 3 Ex. 822:--** In this case, the defendant was to erect and let seats to view the funeral of the Duke of Wellington. He appointed the plaintiff as an agent to sell the tickets for the seats. The plaintiff incurred some expenditure towards advertisement/publicity for sale of the tickets. Before the sale of the tickets, the defendant had revoked the authority (terminated the agency) to sell the tickets. In an action for quantum meruit, it was held that the plaintiff was entitled to recover the expenses from the defendant.

The remedy under quantum meruit is not contractual in nature, though the remedy is available on the breach of contract. The real nature of the remedy is quasi contractual as in the case of:

***Cravan-Ellis v. Cannon Ltd.,* (1936) 2 K.B.403:--** In this case, the defendant company appointed the plaintiff as its Managing

Director. Later, the agreement of his appointment was found void since it was contrary to the provisions of the Articles of Association of the company. The plaintiff sued the company for remuneration for his services. It was held that, though the contract was void and the plaintiff could not claim anything, he was entitled to recover the remuneration for the services rendered.

4. SUIT FOR SPECIFIC PERFORMANCE OR INJUNCTION

Specific Performance:-- 'Specific Performance' means actual carrying out of the promise. In cases, where damages is not an adequate remedy, the aggrieved party can claim specific performance of contract, by filing a suit.

Injunction:-- An injunction is an order of the court of justice directing the defendant to do some positive act or restraining the commission or continuance of some prohibitory act (causing injury or loss to the plaintiff). There may be a contract in which one party promises not to do an act. If he does such act in breach of the promise, the court by issuing the order of injunction restrains him from doing, what he promised not to do.

Questions and How to Answer

(Q) What are the various remedies available to an aggrieved party against the other on the breach of a contract. (A.U., Sept. 99, Part-B, Q.4).

Ans. Write in detail about the remedies for breach of a contract.

(Q) What is meant by 'Quantum Meruit'. (A.U., Model Question Paper, Part-A, Q.10).

Ans. Write about 'Quantum Meruit' in brief.

(Q) What is the rule laid down in *Hadley v. Baxendale?*

Ans. The rule in *Hadley v. Baxendale* refers to 'fixation of the quantum of damages. (Write about the fixation of damages and the case).

SUBJECT INDEX

Acceptance **3,26,41**
- by post 48
- by Telephone or Telex 49
- must be absolute and unqualified 43
- should be expressed 44
- when complete 48

Acceptor 14
Accord 150
Acknowledgement 71
Act forbidden by the Indian Penal Code 94
Agency 71
Agent 71
Agreement(s) **12,13,108,121**
- contingent on impossible event 131
- in restraint of legal proceedings 6,116
- in restraint of marriage 6,114
- in restraint of trade 5,109
- to commit crime 6,119
- void for uncertainty 6,118
- wagering 7
- with Alien 7,122

Alteration or cancellation of the written instrument 153
An act of legislature 146
An agreement enforceable by law 12
Anticipatory Breach 151
Appropriation of Payments 139
Assessment of Loss 178

Assignment
- of a contract 71

Bank 117
Banking company 117
Bankruptcy 153
Before Revocation of offer 45
Beneficiary of a trust 70
Bilateral Mistake 104
Bonds 78
Breach of contract 9,170

Capacity
- of parties 4
- to Contract 2,14,75

Change
- of Parties 149
- of Terms 149

Claim for quantum meruit 183
Coercion 5,93,94,95,96,99

Communication
- of Acceptance 47
- of Offer 37,38
- of Revocation of Offer 39

Companies Act 117
Compensation **9**
- for breach of contract 176
- for failure to discharge obligation 171
- for loss or damage 170
- for loss through non-performance 142
- for Voluntary Services 16,65

Competence
- to contract 75

Conditions for getting relief .. 144
Consensus-ad-idem 14
Consent **91,94**
- flaws in 93
Consequences of the Privity of Contract 68
Consideration **2,3,16,55,56**
- executory 62
- future 62
- must move from promisee 57
- past, present or future 60
Contingency 8,128
Contract(s) **1,12**
- Act 33
- Assignment of 71
- breach of 170
- Capacity to 75
- Competence to 75
- Contingent 8,124,127,132
- contingent on the event not happening 130
- contingent 8,131
- Discharge of 8,71
- Disqualification to 76
- Elements of 10
- Essentials of 10,13
- Illegal 2
- Incapacity 76
- Kinds of 2,10,20,157
- Marriage 2
- Meaning, Definition 11
- of Agency 2
- of Bailment 2
- of guarantee 11
- of Wager 124
- Privity of 58,67
- Quasi 155
- Recission of 170
- Stranger to 67
- through an Agent 71
- Unenforceable 2
- Valid 2
- Void 2
- Voidable 2
- without consideration is valid 63
Contractual obligation(s) 9,11,134
Contribution between/among joint promisors 138
Co-operative Bank 117
Counter Offer 40
Creditor 11
Criminal Conspiracy 6,119
Cross Offers 39
Damages **9**
- Exemplary 180
- fixation of 178
- General 180
- Kinds of 180
- Liquidated 180
- Nominal 180
- Special 180
- suit for 178
Debtor intimates creditor as to appropriation 139
Decision 29

Deliberate 100
Destruction of the subject matter 145
Devolution of Joint Liabilities 135,136
Discharge
- by breach of contract..... 150
- by impossibility of performance 141
- by Lapse of Time 152
- by Operation of Law 152
- by performance 134
- by remission 150
- by subsequent agreement ... 147
- Modes of 133
- of contract(s) 8,71,133

Doctrine
- of Frustration 141,143
- of Novation 147
- of Privity of Contract 67

Donation for Charitable purpose 59
Drawn together 11
Drunken 86
Duress 95
Each promisor may compel contribution 137
Effect
- of Coercion 95
- of Valid Tender 135
- of wagering contracts 125

Elements of Contract 10
Enforceability 11
Enforcement of Contigent Contract..... 129
Essential Elements 45,56
- of a valid offer..... 28
- of Fraud 101

Essentials
- of Contract 10,13
- of Undue Influence 98
- of Wager 126

Estoppel 71
Executed or Present Consideration 62
Executory
- consideration 62
- or Future Consideration 62

Exemplary Damages 181
False Statement of fact..... 101
Financial institution 117
Finder is Bailee only against the True Owner 165
Finder's Right of Lien and Compensation 164
Finders Right to Sell 164
First ingredient of contract 3
Fixation of Damages..... 178
Flaws in consent 93
Fraud 5,100,103
Free Consent 2,4,15,91,92,96
Fulfillment of the obligation 11
General Damages..... 180
General Offer 32
General Principles 1,2
General public 18,108
Guarantor 11
Guardians and Wards Act, 1890..... 14,76

Horse-racing 125
Identity of Minds 14
Idiots 85
Illegal Act 122
Illegal Contract(s) 2,6,20,23
Implied appropriation 140
Impossibility
- existing at the time of the contract 144
- known to the parties 144
- unknown to the parties 144
Incapacity or Disqualification to Contract 76
Indian Contract Act 14
Indian Contract Act, 1872 1
Indian Majority Act, 1875 76
Indian Partnership Act, 1932 2
Ingredients of Misrepresentation 103
Injunction 9
Innocent misrepresentation 100
Insolvency 153
Insurance Contract 127
Intentional 100
Intoxicated Persons 86
Invitation to offer 33,36
Joint Liabilities
- Devolution of 136
Joint Promisors 136
Judgement 29
- of Court 153
Kinds
- of Breach of Contract 151
- of Contracts 2,10,20
- of Damages 180
- of Mistake of Fact 104
- of Quasi Contracts 157
Lawful consideration 12,15
Lawful object 2,5,18,108
Legal Act by an illegal means 122
Legal relations 29
Legal Relationship 16
Legality of object 2,5,18,108
Limitation Act, 1963 67
Liquidated Damages 182
Love and Affection 64
Lunatics 85
Marriage brokerage contract .. 115
Marriage contract by fraud 2
Marriage settlement 70
Merger 153
Minor's Agreement 76
Misrepresentation 5,100,102
- Ingredients of 103
Mistake 104
- of Fact 104
- of Law 105
Mode of communication 48
Modes of Discharge 133
Multi-state Co-operative Bank 117
Must be communicated 46
Need
- for amendment of Section 15 95
- not be adequate 60
No Consent 92
No Estoppel 82
No Ratification 79
No Restitution 80

No Specific Performance 83
No vicarious liability 83
Nominal Damages 181
Non-occurrence of a contemplated event 146
Novation 147
Offer 3,26,27,33,36,134
- and Acceptance 2
- may be express or implied 28
Offeror 14
Opposed to public policy 108
Partnership Act, 1932 113
Partnership 2
Part-payment 71
Party rightfully rescinding contract 177
Past consideration 61
Payment by mistake or under coercion 165
Performance 134
- by Joint Promisors 135
Persons
- disqualified by law 87
- of unsound mind 84
Position
- in England 50
- in India 50
Possibility of Performance 19
Present Breach or During Performance 152
Price 55
Principal 71
- Debtor 11
Privity of Contract 58,67,68
Promise to pay time barred debt 66
Promisee
- may compel one or more 137
- or Beneficiary but not promisor 78
Promissory notes 78
Property 78
Proposal 28
Public Offer 31
Public policy 18,108,109,115
Public welfare 18
Punishment 122
Quantum Meruit 9,182
- claim for 183
- suit for 182
Quasi Contracts 8,155
Reasonable time 45
Reasoning 29
Reasons 29
Reciprocal Promise 135
Regional Rural Bank 117
Regular course of our life 1
Release of Joint Promisor 139
Relief 9
Remedies
- available to an aggrieved party 9
- for Breach of Contract 170
Remedy 9
Requisites of contract 2
Rescission of the Contract 170
Revocation
- of Acceptance 47,50
- of Offer/Proposal 38

Rule of privity of contract 69
Rules of Novation 149
Sale of Goods Act, 1930 1
Sale of Goodwill 113
Same parties and same terms and conditions 148
Same parties with altered terms and conditions 148
Satisfaction 150
Service Contracts 113
Sharing of loss by default in contribution 137
Something in return 55
Sound Mind 84
Special Damages 181
Specific Offer 31,32
Specific Performance 9,184
Specified event 131
Standing or Open or Continuing Offer 40
State Bank of India 117
Statement 102
Stranger
- to contract can sue 70
- to contract 67
Subsequent Impossibility or Impossibility 145
Subsidiary bank 117
Suit
- For Damages 178
- for quantum meruit 182
- for specific performance 184
Surety 11
Tender 134
Terms must be certain 18
Terms must be clear and certain 30
Time barred debt 16
Trade Combinations 113
Transfer of Property Act, 1882 .. 1
Two parties 14
Undue influence 5,96,99
Unenforceable Contract ... 2,20,23
Unilateral Mistake 104
Un-intentional 100
Unlawful detaining of property 95
Valid Contract 2,20
Valid Tender 134
Void ab initio 77
Void Contract 2,20,21,22
Voidable Contract 2,20,22
Wagering Agreement(s) 7,123,124,127
Wagering Contract 132
Wagering 132
Wilful misrepresentation 100
Wrongful intention 102

UNIVERSITY QUESTION PAPERS

Code No. 601

FACULTY OF LAW

B.A.LL.B. (3YDC) I-Year I - Semester Examination, March/April 2014

Subject: LAW

Paper-I - Law of Contract-1

Time: 3 Hours Max. Marks: 80

PART-A (5x6=30 Marks)

Answer any FIVE of the following:

1. Lapse of Offer
2. Offer and invitation to treat
3. Standard form of Contract
4. Quantum Merit
5. Novation
6. Joint promisors
7. Duty to mitigate
8. Perpetual injunctions

PART-B (2x15=30 Marks)

Answer any TWO of the following:

9. Define contract and explain the essentials of the valid contract.
10. "A contract cannot be enforced by a stranger". Discuss the statement with exceptions if any.
11. "An Agreement in restraint of Trade is void". Discuss the statement with exceptions.
12. Discuss the law relating to quasi contracts in India.

PART-C (2x10=20 Marks)

Answer any TWO of the following:

13. 'A' a minor entered into a contract with 'B' a money lender and mortgaged his house for Rs.20,000 by misrepresenting himself as a major. After knowing the fact that A is a minor, B wants to cancel the contract and recover the money advanced to A. Advise B.
14. 'A' a singer promised to perform a concert in B's theater. But, one day before the performance A met an accident which made her fail to perform the promise, B wants to claim damages against A for breach of contract. Decide.

15. 'X' finds a purse on the road, lost by Y. What is liability of X towards Y?
16. A promised to supply some fruits to B on 1st January, 2013. But, A on 20th December, 2012 expressed his inability to deliver the goods. What is the remedy available to B against A.

Code No. 724

FACULTY OF LAW

B.A.LL.B. (5YDC) II-Year III - Semester Examination, January / February 2014

Subject: LAW

Paper-IV- Law of Contract -1

Time: 3 Hours **Max. Marks: 80**

PART-A (5x6=30 Marks)

Answer any FIVE Questions:

1. Intention to offer
2. Counter proposal
3. Standard form of contract
4. Coercion
5. Remission
6. Wagering agreements
7. Duty to mitigate
8. Mandatory injunction

PART-B (2x15=30 Marks)

Answer any TWO Questions:

9. "An agreement without consideration is void". Discuss the statement with exceptions.
10. Discuss the law relating to communication of offer, acceptance and revocation of offer and acceptance.
11. Define public policy and discuss various heads under public policy.
12. Discuss the law relating to quasi-contracts in India.

PART-C (2x10=20 Marks)

Answer any TWO Questions:

13. A borrowed Rs. 10,000 from B for gambling. Afterwards he refused to return the money to B. What, is the remedy available to B.

14. A and B enter into a contract that A shall do some work for B for Rs.1000. As A, is ready and willing to do the work, but B prevents him from doing so. Advise A.
15. A tells his wife that he would commit suicide, if she did not transfer her personal assets to him. She does so under this contract. Can the wife avoid the contract.
16. A, B and C jointly promise to pay D Rs.3,000. A and B are untraceable. Can 'D' compel C to pay him in full.

Code No. 601/BL

FACULTY OF LAW

B.A.LL.B. (3YDC) I-Year 1 - Semester Examination, June 2014

Subject: LAW

Paper-I - Law of Contract -1

Time: 3 Hours **Max. Marks: 80**

PART-A (5x6=30 Marks)

Answer any FIVE of the following:

1. Lapse of Offer
2. Standard form of Contact
3. Undue influence.
4. Wagering agreements
5. Novation.
6. Accord and satisfaction
7. Anticipatory breach.
8. Mandatory injunctions

PART-B (2x15=30 Marks)

Answer any TWO of the following:

9. All contracts are agreements but all agreements are not contracts.

10. Discuss the rule of privity of contract with exceptions.
11. Define lawful object and discuss various heads under public policy.
12. Discuss the law relating to quasi contracts in India.

PART -C (2x10=20 Marks)

Answer any TWO of the following:

13. 'A' offers by letter to sell his car to 'B' for Rs.15,000. B, at the same time, offers by a letter to buy A's car for Rs.15,000. The two letters cross each other in the post. Is there a concluded contract between A and B.
14. A minor fraudulently represented to a money-lender that he was of full age and executed a mortgage deed for Rs. 10,000. Has the money lender any right of action against the minor for the money lent or for damages for fraudulent, misrepresentation.
15. A tells his wife that he would commit suicide, if she did not transfer her personal assets to him. She does so under this threat. Can the wife avoid the contract.
16. A, B and C jointly promise to pay D Rs.3,000. A and B are untraceable. Can D compel C to pay him in full.

Code No. 724/BL

FACULTY OF LAW

B.A.LL.B. (5YDC) II-Year III - Semester Examination, June 2014

Subject: LAW

Paper-IV - Law of Contract -1

Time: 3 Hours **Max. Marks: 80**

PART-A (5x6=30 Marks)

Write short notes on any FIVE of the following:

1. Lapse of Offer
2. Acceptance
3. Coercion
4. Misrepresentation
5. Wager agreement
6. Novation
7. Duties of finder of lost goods
8. Rescission of contracts

PART-B

(4x12½ =50 Marks)

Answer any FOUR of the following questions:

9. "All contracts are agreements but all agreements are not contracts". Discuss.
10. Explain the rule of privity of contract with exceptions if any.
11. "An agreement opposed to public policy is void". Discuss. What are the various heads of public policy.
12. State the circumstances under which court will decree specific performance of a part of contract.
13. A, a minor mortgaged his house to a money lender for Rs.20,000 by misrepresenting his age as 19 years. Discuss about the liability of A towards money lender.
14. A, a singer entered into a contract to perform a program in B's theatre. But, before the performance A met with an accident and was not able to perform the program. What remedy is available to B.
15. A and B entered into an agreement to manufacture and sell arrack which is prohibited by law. What is the status of agreement?
16. A bought a car from B by giving a cheque for Rs.50,000. B accepted the cheque on believing A as a reputed person. A sold the car to C. But the check given to B is dishonoured. Is there any remedy available to B. Discuss.

Code No. 5728

FACULTY OF LAW

B.A.LL.B. (5 YDC) II-Year III - Semester Examination, Jan./Feb. 2015

Subject: LAW

Paper-IV - Law of Contract-I

Time : 3 Hours **Max. Marks : 80**

PART-A

(5x6=30 Marks)

Answer any Five of the following

1. Invitation to offer.
2. Privity of contract.

3. Standard form of contract.
4. Voidable contract.
5. Accord and satisfaction.
6. Finder of lost goods.
7. Undue influence.
8. Declaratory decrees.

PART-B (2x15=30 Marks)

Answer any Two of the following

9. Define 'contract' and discuss the important elements of a valid contract.
10. Discuss the effects of an agreement with a minor.
11. Discuss the discharge of contract by way of doctrine of frustration.
12. Discuss the law relating to injunctions under the Specific Relief Act.

PART-C (2x10=20 Marks)

Answer any Two of the following

13. 'A' offers by letter to sell his car to 'B' for Rs.15,000. B, at the same time, offers by a letter to buy A's car for Rs. 15,000. The two letters cross each other in the post. Is there a concluded contract between A and B?
14. 'A' a minor fraudulently represented to a moneylender that he was of full age and executed a mortgage deed for Rs. 10,000. Has the moneylender any right of action against the minor for the money lent or for damages for fraudulent misrepresentation.
15. A and B enter into a contract that 'A' shall do some work for B for Rs.500. As A is ready and willing to do the work, but B prevents him from doing so. Advise A.
16. A owes money to B under a contract. It is agreed between A, B and C that B shall hence forth accept 'C' as his debtor instead of A. Can B claim payment from C?

Code No. 3144

FACULTY OF LAW

B.A. LL.B. (5 YDC) II-Year III - Semester Examination, December 2015

Subject: LAW

Paper-IV - Law of Contract-I

Time: 3 Hours Max. Marks: 80

PART-A

(5x6=30 Marks)

Answer any Five of the following

1. Undue influence
2. Voidable agreements.
3. Lapse of offer
4. Privity of consideration
5. Cross offers.
6. Mistake of Law.
7. Void Contract
8. Temporary injunction.

PART-B

(2x15=30 Marks)

Answer any Two of the following

9. What are effects of an agreement with a minor?
10. Discuss the doctrine of privity of contract ? What are its exceptions?
11. What remedies are available for breach of contract other than a claim for damages?
12. When specific performance can be issued under the Specific Relief Act?

PART-C

(2x10=20 Marks)

Answer any Two of the following

13. A borrowed Rs. 50,00,000/- from B for starting a gambling house. Afterwards he refused to return the money. What is the remedy available to B.

14. 'D' a doctor, agreed to perform an operation on the patient 'P' for Rs. 10,000. Two days before the operation 'D' demanded Rs. 5,000 more. 'P' agreed to pay that amount of Rs. 5,000 also. Should 'P' pay?

15. 'X' told 'Y' that he would give Rs. 10,000 if it rains tomorrow. 'Y' told 'X' that he would give Rs. 10,000 if it does not rain. The next day it rained. Should 'X' pay Rs. 10,000 to 'Y'?

16. A agrees to let her daughter be hired by B for concubinage. Is the agreement valid?

Code No. 1006

FACULTY OF LAW

LL.B. (3 YDC) I-Year I - Semester Examination,

February / March 2016

Subject: LAW

Paper-I - Law of Contract -I

Time: 3 Hours **Max. Marks: 80**

PART-A (5x6=30 Marks)

Answer any Five of the following

1. Reciprocal promises.
2. Standing tender.
3. Quantum Merit.
4. Wagering Agreement.
5. Quasi-Contract.
6. Liquidated damages
7. Uberrimae fidei.
8. Anticipatory breach.

PART-B (2x15=30 Marks)

Answer any Two of the following

9. Explain "The law of contracts is not the whole law of agreements nor is it the whole law of obligations".

10. Under what circumstances a contract is said to be induced by undue influence? State the difference between coercion and undue influence.

11. Discuss the law relating to the enforcement of contingent contracts.

12. "An agreement with a minor is absolutely void in India". Discuss.

PART-C

(2x10=20 Marks)

Answer any Two of the following

13. 'X' promises to drop a prosecution which he instituted against B as B had committed extortion. However B gives an undertaking that he shall repay the money and things which he took away through extortion. Examine the legal position of such on agreement.

14. 'A' proposes, by a letter to sell his house to 'B' at a certain price. B accepts A's proposal by a letter sent by post. Explain the legal position and when acceptance is complete?

15. A promises B to sell his car for Rs. 1,50,000 on a certain date. B agrees to pay the price on receipt of the car. A refused to sell his car to B. Explain the future consequences in the above agreement.

16. 'A' pays B Rs. 10,000/- in consideration of B's promise to marry 'C', A's daughter. C dies before marriage? Explain the fate of 'B' with suitable examples.

FACULTY OF LAW

LL.B. (3 YDC) I-Year I-Semester Examination,

May/ June 2016

Subject: LAW

Paper : I

Law of Contract -1

Time : 3 hours **Max. Marks : 80**

PART-A (5x6 = 30 Marks)

Answer any Five questions.

1 Unenforceable contract
2 Time-barred debt
3 Surety for a Minor
4 Contingent contract
5 Special damages
6 Injunction
7 Rescission
8 Tender

PART - B (2x15=30 Marks)

Answer any Two questions.

9 "Offer and acceptance bring the parties together but the law requires some further evidence of their intention to create legal relationship". Comment.

10 Discuss the contractual liability of minor under the Indian Contract Act.

11 What do you understand by performance of a contract? Under what circumstances a contract need not be performed?

12 What are the various remedies available to a party in case of breach of contract.

PART - C (2x10=20 Marks)

Answer any Two questions.

13 'A' agrees with 'B', to sell his house worth Rs.1000 for Rs.10 only. Is this agreement valid?

14 'A', a trader supplies 'B', a minor with rice needed for his consumption. 'B' refuses to pay the price. Can 'A' recover the price?

15 'B', A's daughter has just come of age. 'Z' sells to 'B' a horse which 'Z' knows to be unsound. Z says nothing to 'B' about the horse's unsoundness. Does A's silence amount to fraud. Examine.

16 'A' pays Rs.20,000 to 'B' in consideration of B's promise to Marry D, A's daughter. 'D' dies and the marriage does not take place. Can 'A' claim refund of money?

Code No. 630

FACULTY OF LAW

B.Com. L.L.B. (5 YDC) / B.B.A. L.L.B. (5 YDC) / B.A. LL.B. (5YDC) II - Year III Semester Examination, Jan/Feb 2017

Subject: LAW

Paper : IV

Law of Contract-1

Time : 3 hours **Max. Marks : 80**

PART-A (5x6=30 Marks)

Answer any Five of the following

1 Offer and invitation to offer
2 Counter Proposal
3 Standard Form of contract
4 Coercion
5 Remission
6 Wagering agreement
7 Finder of lost goods
8 Specific relief

PART - B (2x15=30 Marks)

Answer any Two of the following

9 Define contract and distinguish between void agreement, void contract and voidable contract.

10 "An agreement without consideration is void". Discuss the statement with exceptions if any.

11 Explain various methods of discharge of a contract.

12 Discuss the law relating to injunction in India.

PART - C (2x10=20 Marks)

Answer any Two of the following.

13 A tells B in the course of conversation that he will give Rs.10,000 to any person who marries his daughter with his consent. B marries A's daughter with A's consent. Is he entitled to recover this amount?

14 A's uncle in a sudden display of generosity promises him a watch as a gift on his next birthday. If the uncle fails to give the watch. Can A legally claim it?

15 A and B each deposit Rs.1000 with 'C' to abide by the result of a bet between them. A wins the bet. C refuses to pay the amount to A. Can A recover the bet amount from 'C'?

16 A supplied rice and wheat to the wife and children of B. who is a lunatic. B has assets worth of one lakh rupees. On non-payment, can a proceed against the assets of B?

Code No. 561

FACULTY OF LAW

LL.B. (3 YDC) & LL.B. (3 YDC) (Honours) I -Year I-Semester Examination, March/April 2017

Subject: LAW

Paper - I: Law of Contract -1

Time : 3 Hours **Max. Marks : 80**

PART - A (5x6=30 Marks)

Answer any FIVE of the following:

1 What is an agreement?
2 Executory contract
3 Minor as a shareholder
4 Wagering contract
5 Remote damages
6 Quasi contract
7 Quantum Merit
8 Novation

PART - B (2x15=30 Marks)

Answer any TWO of the following questions:

9 "All agreements are not contracts, but all contracts are agreements". Discuss.

10 "Parties to a contract must be competent to contract". Explain.

11 Define the term contingent contract. Discuss the rules relating to contingent contracts.

12 State various ways in which a contract may be terminated.

PART C

Answer any TWO of the following questions: (2x10=20 Marks)

13 'A' invites 'B' to dinner B accepts the invitation but does not turn up at the dinner. Can 'A' sue 'B' for the loss he has suffered.

14 'X' a minor borrowed from 'Y', a sum of Rs. 10,000/- the payment of the loan was guaranteed by 'Z' who is a major. 'X' refuses to pay. Can Y hold 'Z' liable for the money.

15 'M' an old man of poor sight endorsed a bill of exchange of Rs. 10,000/- thinking that it was a guarantee. Is 'M' liable to pay the amount.

16 'X' agreed to let his hall to 'y' for some public entertainment on 1st August 2014. On 20th July, 2014 the hall was destroyed by fire. Discuss the rights of 'X' and 'Y'.

Code No. 15101

FACULTY OF LAW

LL.B (3 YDC) LLB (Hon.) (3YDC) I Year I - Semester Examination, February 2019

Subject: Law

Paper I: Law of Contract -1

Time: 3 Hours **Max. Marks: 80**

PART-A (Short Answer Type) (5x6=30 Marks)

Note: Answer any five of *the* following

1. Counter offer
2. Exceptions to Privity of contract
3. Free consent
4. Contingent contract
5. Appropriation of Payments
6. Doctrine of Frustration
7. Remedies for breach of contract
8. Rectification of instruments.

PART - B (2x15=30 Marks)

9. Discuss briefly the rules relating to communication of acceptance and revocation of acceptance.

10. Explain the Essential conditions of valid contract.
11. What are quasi contracts? What are the provisions Indian Contracts Act, 1872?
12. Explain in detail temporary and perpetual injunctions and distinguish between mandatory and prohibitory injunctions.

PART-C (2x10=20 Marks)

Answer any two of the following

13. Mr. Lal offers to donate Rs.50,000/- to the orphanage. The orphanage accepts the offer. Can the orphanage recover the amount through Court of law, if Mr. Lal fails to pay the amount?
14. Mr. Pradeep hired a godown from Mr. Dinesh for a period of ten months and paid the whole rent to him in advance. After four months, the godown was destroyed by fire and Pradeep claimed a refund of a proportionate amount of the rent. Is the claim valid?
15. Ramu sells the goodwill of his shop to Shyam For Rs. 2,00,000/- and promises not to carry on such business for ever and anywhere in India. Is this agreement valid?
16. 'A' is the owner and possessor of a flat in an apartment. 'B' alleges that he is the owner of the flat and requires 'A' to deliver it to him. Discuss the remedies available to A under the Specific Relief Act.

Code No. 707

FACULTY OF LAW

LL.B (3 YDC) I - Year I - Semester Examination, September - 2021

Subject: Law

Paper I: Law of Contract - I

Time: 2 Hours Max. Marks: 80

PART-A (4x10=40 Marks)

Note: Answer any four questions.

1. Intention to Contract
2. Offer
3. Standard Form of Contract
4. Undue Influence
5. Accord and Satisfaction
6. Quantum Meruit
7. Contingent Contracts
8. Kinds of damages

PART - B (1x20=20 Marks)

Note: Answer any one question.

9. Define a Contract. What are the essentials of a Valid Contract.
10. "An agreement in restraint of trade is void" - Discuss the statement with exceptions.
11. Explain the Doctrine of Frustration as a method of discharge of Contract.
12. Write a brief note in specific relief given to a Plaintiff.

(1x20=20 Marks)

PART-C

Note: Answer any one question.

13. A tells his wife that he would commit suicide, if she does not give a release deed in favour of his brother.She does so under this threat. Decide the validity of this contract.
14. The wife of a person died from tin poisoning caused by the tinned salmon bought from a dealer. What damages can the husband claim?
15. A, who is B's friend seeks the help of a few persons in putting down a firm in B's house. B promises to give 'A' Rs.1000 for his timely help. Can 'A' recover the amount?
16. A, B and C jointly promise to pay D Rs.3000. A and B untraceable. Can D compel C to pay him in full?

Code No. 12464

FACULTY OF LAW

LL.B (3 YDC)/LLB (3YDC) (Honours) I - Year
I - Semester Examination, April/May 2022

Subject: Law

Paper I: Law of Contract - I

Time: 3 Hours **Max. Marks: 80**

PART-A (5x6=30 Marks)

Note: Answer any five questions.

1. Lapse of Offer
2. Undue Influence
3. Standard Form of Contract
4. Novation
5. Duty to Mitigate

6. Contingent Contract
7. Specific Performance
8. Declaratory Decrees

PART - B

(2x15=30 Marks)

Note: Answer any two questions.

9. "All contracts are agreements but all agreements are not contracts"- Discuss.
10. Explain the effects of agreement with a minor under the Indian Contract Act.
11. What the various modes to discharge a contract.
12. Discuss the remedies for breach of contract and kinds of damages.

PART-C

(2x10=20 Marks)

Note: Answer any two questions.

13. A, offers by a letter to sell his car to B for Rs.50,000/- B, at the same time offers by a letter to buy A's car for Rs.50,000/-. Both A and B received the respective letters. Is there a concluded contract between A and B?
14. A Muslim lady sued her father-in-law to recover arrears of allowance payable to her by him. Under an agreement between him and her own father in consideration of her marriage. Will she succeed?
15. A, sold some land to B at the time of the sale both parties believed in goodfaith that the area of the land sold was 10 hectare. It however, turned out that the area was 7 hectares only. How is the contract affected. Give reasons.
16. A left his carriage on B's premises. B's landlord seized the carriage as distress for recent. A paid the rent to obtain the release of his carriage. Can A recover the amount from B?

Code No. 12687

FACULTY OF LAW

B.A., LL.B (5 YDC)/BB.A., LL.B (5 YDC)/B.Com., LL.B (5 YDC) II Year III - Semester Examination, April/May 2022

Subject: Law

Paper IV : Law of Contract - I

Time: 3 Hours **Max. Marks: 80**

PART-A (5x6=30 Marks)

Note: Answer any five questions.

1. Offer and invitation to offer
2. Provisional acceptance
3. Undue Influence
4. Wager agreement
5. Novation
6. Accord and satisfaction
7. Finder of lost goods
8. Duty to Mitigate

PART - B (2x15=30 Marks)

Note: Answer any two questions.

9. Define consideration and "an agreement without consideration is void". Explain this statement with exceptions.
10. Who has the capacity to enter into an agreement? Discuss the effects of minor's agreement.
11. Write a note on appropriation of payments with the help of decided cases.

12. Explain the conditions under which the specific performance may be granted.

PART-C (2x10=20 Marks)

Note: Answer any two questions.

13. A wrote a letter to B stating he wants to sell his house to B for 1 lakh rupees. Before receiving this letter B also wrote a letter to A, stating that he wants buy the house of A for Rs. 1 lakh. Explain whether these letters from an agreement.

14. A Hindu window was forced to adopt a boy of a close relation of her deceased husband. Unless she accepts the adoption, the dead body of her husband was not allowed to take out. She accepts the adoption of the boy. However, she denies her free consent for that adoption.

15. A promised to supply goods to 'B' on or before a particular data. But before that expected delivery data itself. A expressed his inability to supply the goods to B. What are the remedies available to B?

16. A post man by mistake delivered a parcel to Mr.X thinking that he is Mr.Y. Decide the consequences.

Code No. D-12464

FACULTY OF LAW

LL.B (3 YDC)/LL.B (3 YDC) (Honours) I Year
I Semester Examination,
May/June 2022

Subject: Law

Paper I : Law of Contract - I

Time: 3 Hours **Max. Marks: 80**

PART-A

(5x6=30 Marks)

Note: Answer any five questions.

1. Specific Offer
2. Consideration
3. Undue Influence
4. Contingent contracts
5. Accord and satisfaction
6. Rights of finder of lost goods
7. Kinds of damages
8. Rectification of instruments

PART - B

(2x15=30 Marks)

Note: Answer any two questions.

9. Define "contract" and explain the essentials of a valid contract.
10. Discuss the effect of Minor's agreement.
11. What is meant by Doctrine of Frustration?
12. Distinguish between temporary and perpetual injunctions and also the mandatory and prohibitory injunctions.

PART-C

(2x10=20 Marks)

Note: Answer any two questions.

13. Mr. Das offered to sell his farm to Mr. Lal for Rs.80,000/- but Lal said he would buy it for Rs.75,000/- only. Later on Lal agreed to buy the farm for Rs.80,000/- But then Das refused to sell the farm. Can Lal sue for specific performance of contract?

14. Arun fraudently informs Bushan that his house is free from encumbrances. Bushan thereupon buys the house. The house is subject to a mortagage. Can Bushan file a case to aboid the contract and get back the money?

15. Rajan and Sujan jointly owe Rs.30,000/- to Prasad. Rajan alone pays the amount to Prasad; and Sujan, not knowing this fact, pays Rs.30,000/- over again to Prasad. Is there any obligation on Prasad to repay the amount to Sujan, if so, under which provision of law?

16. A conveys land to B, who bequeaths it to C and dies. Thereupon D gets possession of the land and produces a forged instrument stating that the conveyance was made to B in trust for him. What is the suitable relief sought by C in the suit?